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*Counsel for Shang Peng Gao Ke Inc. SEZC and SPGK Pte Ltd*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re

ASCENTRA HOLDINGS, INC. (in Official  
Liquidation),

Debtor in a  
Foreign Proceeding.<sup>1</sup>

Case No. 21-11854-dsj

Chapter 15

**REPLY DECLARATION OF JEFFREY M. DINE IN FURTHER SUPPORT  
OF MOTION OF SHANG PENG GAO KE INC. SEZC  
AND SPGK PTE LTD. PURSUANT TO 11 U.S.C. §§ 1517(d)  
AND 1520(c) FOR AN ORDER TERMINATING THE RECOGNITION ORDER**

I, Jeffrey M. Dine, declare as follows:

1. I am an attorney with the law firm of Pachulski Stang Ziehl & Jones LLP (“PSZJ”), with offices located at 780 Third Avenue, 34th Floor, New York, New York 10017, and with other offices in Texas, California, and Delaware.

<sup>1</sup> The Debtor’s company registration number is 283719. The Debtor’s registered office is c/o JTC (Cayman) Ltd., 94 Solaris Avenue, Second Floor, Camana Bay, PO Box 30745, Grand Cayman, Cayman Islands, KY1-1203.

2. PSZJ is counsel to Shang Peng Gao Ke Inc. SEZC (“SPGK Cayman”) and SPGK Pte Ltd (“SPGK Singapore”, and together with SPGK Cayman, “SPGK”) in the above-captioned chapter 15 case.

3. I am duly admitted to practice law in, among other places, the State of New York and the United States District Court for the Southern District of New York.

4. I submit this reply declaration in further support of the *Motion of Shang Peng Gao Ke Inc. SEZC and SPGK Pte Ltd. Pursuant to 11 U.S.C. §§ 1517(d) and 1520(c) for an Order Terminating the Recognition Order* (the “Motion”).

5. A copy of the transcript of the deposition of Graham Robinson, taken February 29, 2024, is attached as **Exhibit 1**.

6. A copy of the JOLS’ *Fourth Letter to Court re Status Report* [ECF No. 82] (December 29, 2023), is attached hereto as **Exhibit 2**.

7. A copy of the transcript of the deposition of Alexander Gray Henderson, taken September 28, 2023, is attached as **Exhibit 3**.

8. A copy of the Judgment of the Court of Appeal of the Republic of Singapore in Civil Appeal No. 23 of 2022 is attached hereto as **Exhibit 4**.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 14, 2023  
New York, New York

/s/ Jeffrey M. Dine  
Jeffrey M. Dine

# **EXHIBIT 1**

GRAHAM ROBINSON 30(b)(6)  
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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE SOUTHERN DISTRICT OF NEW YORK 3 -----x 4 In re 5 ASCENTRA HOLDINGS, INC. (In Official 6 Liquidation), Chapter 15 7 Case No.21-11854 (DSJ) 8 9 Debtor in a 10 Foreign Proceeding. 11 -----x 12 13 14 VIDEOTAPED 30(b)(6) DEPOSITION 15 OF 16 ASCENTRA HOLDINGS, INC. 17 By: GRAHAM ROBINSON, Corporate Representative 18 New York, New York 19 Thursday, February 29, 2024 20 21 22 23 24 Reported by: Frank J. Bas, RPR, CRR 25 Job No. J10806182</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 PILLSBURY WINTHROP SHAW PITTMAN LLP Attorneys for Petitioners 4 31 West 52nd Street New York, New York 10019 5 6 BY: HUGH M. McDONALD, ESQ. (hugh.mcdonald@pillsburylaw.com) JOHN A. PINTARELLI, ESQ. (john.pintarelli@pillsburylaw.com) 7 8 9 CAMPBELLS LLP JOLs Cayman Islands Counsel 10 Floor 4, Willow House, Cricket Square Grand Cayman KY1-9010 11 Cayman Islands 12 BY: GUY COWAN, ESQ. (gcowan@campbellslegal.com) 13 14 KATIE LOGAN, ESQ. (Via Zoom) (klogan@campbellslegal.com) 15 16 BLAIR LEAHY KC (Via Zoom) For Joint Liquidators of Ascentra Holdings 17 20 Essex St. Chambers London, England, United Kingdom (bleahy@twentyessex.com) 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">Page 2</p> <p>1 2 3 February 29, 2024 4 9:38 a.m. EST 5 6 Videotaped 30(b)(6) Deposition of ASCENTRA 7 HOLDINGS, INC., by GRAHAM ROBINSON, Corporate 8 Representative, held at the offices of Pachulski Stang 9 Ziehl &amp; Jones, 780 Third Avenue, New York, New York, 10 before Frank J. Bas, a Registered Professional 11 Reporter, Certified Realtime Reporter, and Notary 12 Public of the State of New York. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S: 2 3 PACHULSKI STANG ZIEHL JONES LLP Attorneys for SPGK Pte. Ltd. 780 Third Avenue, 34th Floor 4 New York, New York 10017 5 BY: JOHN A. MORRIS, ESQ. BETH E. LEVINE, ESQ. JEFFREY DINE, ESQ. (jmorris@pszjlaw.com) (blevine@pszjlaw.com) (jdine@pszjlaw.com) 6 7 8 9 10 HARNEY WESTWOOD &amp; RIEGELS 3rd Floor, Harbour Place 103 South Church Street 11 Grand Cayman PO Box 10240 KY1-1002 12 Cayman Islands 13 14 BY: CAITLIN MURDOCK, ESQ. (caitlin.murdock@harneys.com) 15 16 ALSO PRESENT: DMITRY ZVONKOV, Videographer RYUNOSUKE "LUKE" YOSHIDA 17 18 (APPEARING VIA ZOOM): 19 NIENKE LILLINGTON, Campbells SUI HUNG YEUNG, Harneys 20 ALIANA DODDS, Campbells MINNA WU, Harneys 21 KELSEY SABINE, Harneys 22 23 24 - o o o - 25</p>



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1 G. ROBINSON  
2 THE VIDEOGRAPHER: We are on the  
3 record. Today's date is February 29,  
4 2024. The time on the video is  
5 9:38 a.m.  
6 This is video 1 in the deposition  
7 of Graham Robinson In Re Ascentra  
8 Holdings, Inc., in the U.S. Bankruptcy  
9 Court, Southern District of New York.  
10 Case No. 21-11854(DSJ).  
11 This deposition is taking place at  
12 780 Third Avenue, New York, New York.  
13 The videographer is Dmitry Zvonkov, the  
14 court reporter is Frank Bas, both with  
15 Esquire.  
16 Will counsel please identify  
17 themselves for the record.  
18 MR. MORRIS: John Morris, Pachulski  
19 Stang Ziehl & Jones, for SPGK.  
20 THE COURT REPORTER: Just the main  
21 players, that's fine.  
22 MR. McDONALD: Hugh McDonald,  
23 Pillsbury Winthrop, for the witness,  
24 Mr. Robinson.  
25 THE VIDEOGRAPHER: Will the

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1 G. ROBINSON  
2 reporter please swear in the witness.  
3 ---  
4  
5 GRAHAM ROBINSON,  
6 called as a witness, having been first duly  
7 sworn by a Notary Public, was examined and  
8 testified  
9 as follows:  
10 EXAMINATION BY  
11 MR. MORRIS:  
12 Q. Good morning, Mr. Robinson.  
13 A. Good morning.  
14 Q. My name is John Morris. I'm an  
15 attorney at Pachulski Stang Ziehl & Jones, and  
16 we represent SPGK in connection with the  
17 Ascentra Chapter 15 proceeding. Thank you  
18 very much for coming to New York.  
19 Do you understand that we're here  
20 for your deposition today?  
21 A. Yes.  
22 Q. And have you ever been deposed  
23 before, sir?  
24 A. Yes.  
25 Q. How many times?

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1 G. ROBINSON  
2 A. Once.  
3 Q. And how long ago was that?  
4 A. Good question. I would say 2018.  
5 Q. And was it in a personal capacity  
6 or in a professional capacity?  
7 A. Professional capacity.  
8 Q. Was it in the United States or was  
9 it elsewhere?  
10 A. In the United States.  
11 Q. Okay. So I don't know how much of  
12 that you remember, it's six years ago, but  
13 really general ground rules:  
14 I'm not here to trick you. I'm  
15 going to ask you a series of questions. It's  
16 very important that you allow me to complete  
17 my question before you begin your answer.  
18 Is that fair?  
19 A. Understood.  
20 Q. And it's very important for me to  
21 allow you to complete your answer before I  
22 begin the next question. And if I fail to do  
23 that, will you let me know?  
24 A. Yes.  
25 Q. If at any time I ask a question

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1 G. ROBINSON  
2 that you don't understand, will you let me  
3 know that, too?  
4 A. Okay.  
5 Q. Okay. If you need a break at any  
6 time, feel free to let me know that, as long  
7 as a question is not pending.  
8 Is that fair?  
9 A. Understood.  
10 Q. Okay.  
11 MR. McDONALD: John, just before we  
12 go on, it's not his personal deposition.  
13 He's here as the foreign representative  
14 of Ascentra. You've noticed this --  
15 MR. PINTARELLI: Somebody's device  
16 is on so it's echoing. Is the Zoom  
17 connected too?  
18 (Pause in proceedings.)  
19 MR. MORRIS: I agree. He's not  
20 here in his individual -- as a personal  
21 deposition. He's here as a  
22 representative of the estate.  
23 MR. McDONALD: Correct. You've  
24 noticed this as a 30(b)(6). And he's  
25 here as the foreign representative, as a

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<p style="text-align: right;">Page 9</p> <p>1 G. ROBINSON</p> <p>2 representative of the Ascentra Holdings</p> <p>3 estate.</p> <p>4 THE COURT REPORTER: Can we go off</p> <p>5 the record?</p> <p>6 MR. MORRIS: I think we should.</p> <p>7 THE VIDEOGRAPHER: Are we going off</p> <p>8 the record?</p> <p>9 THE COURT REPORTER: Yes.</p> <p>10 THE VIDEOGRAPHER: This ends</p> <p>11 media 1. We're going off the record at</p> <p>12 9:42.</p> <p>13 (Pause in proceedings.)</p> <p>14 THE VIDEOGRAPHER: This begins</p> <p>15 media 2. On the record at 9:46.</p> <p>16 BY MR. MORRIS:</p> <p>17 Q. Okay. Back on the record.</p> <p>18 Mr. Robinson, you serve as one of</p> <p>19 the joint official liquidators for an entity</p> <p>20 called Ascentra Holdings, Inc., is that</p> <p>21 correct?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. When did you become a</p> <p>24 liquidator of that entity?</p> <p>25 A. A voluntary liquidator or official</p>	<p style="text-align: right;">Page 11</p> <p>1 G. ROBINSON</p> <p>2 got --</p> <p>3 MR. McDONALD: Can we --</p> <p>4 MR. PINTARELLI: Graham, it's okay</p> <p>5 to answer. All of the information is</p> <p>6 public. It's in the public filing in</p> <p>7 the U.S., verified petitions, so it's</p> <p>8 okay.</p> <p>9 THE WITNESS: It's in the public</p> <p>10 filing, okay.</p> <p>11 Q. Before you answer I want to make</p> <p>12 something really clear here.</p> <p>13 A. Yes.</p> <p>14 Q. So I am going to ask questions, and</p> <p>15 from time to time Mr. McDonald might object.</p> <p>16 A. Understood.</p> <p>17 Q. And when he objects, sometimes he's</p> <p>18 objecting because he's trying to preserve the</p> <p>19 record because he thinks there's something</p> <p>20 improper about the question from an</p> <p>21 evidentiary point of view. That gives me the</p> <p>22 opportunity to either correct the question, if</p> <p>23 I agree with him, or say I don't really care,</p> <p>24 for whatever reason in my head, and you'll</p> <p>25 answer the question.</p>
<p style="text-align: right;">Page 10</p> <p>1 G. ROBINSON</p> <p>2 liquidator?</p> <p>3 Q. Let's start with voluntary.</p> <p>4 A. That was the 1st of June 2021, I</p> <p>5 believe.</p> <p>6 Q. And you became the official</p> <p>7 liquidator in September?</p> <p>8 A. 17th of September 2021.</p> <p>9 Q. Okay. How did you come to be</p> <p>10 the voluntary liquidator for Ascentra</p> <p>11 Holdings, Inc.?</p> <p>12 A. I was appointed via the shareholder</p> <p>13 resolutions.</p> <p>14 Q. And do you recall who the</p> <p>15 shareholders were?</p> <p>16 A. Of Ascentra Holdings?</p> <p>17 Q. Yes, sir.</p> <p>18 A. I do, yes.</p> <p>19 Q. And who were they at the time that</p> <p>20 you were appointed?</p> <p>21 A. I am slightly uncertain whether</p> <p>22 under Cayman law you would be entitled to know</p> <p>23 who the shareholders of Ascentra are.</p> <p>24 Q. Are you not going to tell me?</p> <p>25 A. I'm happy to tell you. But I've</p>	<p style="text-align: right;">Page 12</p> <p>1 G. ROBINSON</p> <p>2 He may also from time to time</p> <p>3 specifically direct you not to answer a</p> <p>4 question, and he and I will discuss why he's</p> <p>5 doing that so I understand the basis for it.</p> <p>6 If he doesn't direct you not to answer a</p> <p>7 question -- and, you know, Mr. MacDonald will</p> <p>8 give you the ultimate advice -- but as a</p> <p>9 general matter, if he doesn't direct you not</p> <p>10 to answer, you should answer the question.</p> <p>11 Okay?</p> <p>12 MR. MORRIS: Is that fair, Hugh?</p> <p>13 MR. McDONALD: And to the extent</p> <p>14 that you believe that your answer may</p> <p>15 implicate the attorney-client privilege,</p> <p>16 please let us know, and then we can</p> <p>17 consult. Okay?</p> <p>18 MR. MORRIS: Yes.</p> <p>19 Q. To be very clear, if in your head</p> <p>20 you think the divulging -- you know, answering</p> <p>21 a question will violate a duty or a law or an</p> <p>22 obligation on your part, we'll take a break,</p> <p>23 and you can consult with Mr. MacDonald and</p> <p>24 we'll figure out how to go forward. Okay?</p> <p>25 A. Okay. Yes.</p>

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<p style="text-align: right;">Page 13</p> <p>1 G. ROBINSON</p> <p>2 Q. All right?</p> <p>3 So let's go back to where I was.</p> <p>4 Do you recall who the shareholders were who</p> <p>5 appointed you as the voluntary liquidator?</p> <p>6 A. Of Ascentra Holdings?</p> <p>7 Q. Yes. Sir.</p> <p>8 A. IR-P Holdings Limited. INTL Media.</p> <p>9 And the other shareholders are Jeffrey</p> <p>10 Boshears.</p> <p>11 Ryan -- I can't remember Ryan's</p> <p>12 name. It begins with K.</p> <p>13 And Alex Olivia. Or Oliva. Oliva.</p> <p>14 Q. Do you know who the principal was</p> <p>15 of IR-P who appointed you on behalf of that</p> <p>16 entity?</p> <p>17 A. The liquidator of IR-P Holdings.</p> <p>18 Q. And what's that person's name?</p> <p>19 A. That person's name is me.</p> <p>20 Q. And when did you become the</p> <p>21 liquidator of IR-P?</p> <p>22 A. I became the liquidator of --</p> <p>23 voluntary liquidator of IR-P Holdings on the</p> <p>24 28th of May 2021.</p> <p>25 Q. And so as the liquidator of IR-P,</p>	<p style="text-align: right;">Page 15</p> <p>1 G. ROBINSON</p> <p>2 Q. And did you have an understanding</p> <p>3 at that time as to who Campbells represented?</p> <p>4 A. Yes.</p> <p>5 Q. And what was your understanding as</p> <p>6 to who Campbells represented at the time they</p> <p>7 approached you about the possibility of</p> <p>8 serving as the voluntary liquidator?</p> <p>9 A. They represented, I believe, or</p> <p>10 acted for Marty Matthews.</p> <p>11 Q. And who at Campbells first</p> <p>12 approached you about this potential</p> <p>13 engagement?</p> <p>14 A. Guy Cowan.</p> <p>15 Q. And do you recall what Mr. Cowan</p> <p>16 told you about the potential engagement?</p> <p>17 MR. McDONALD: Objection.</p> <p>18 A. I would say that the conversations</p> <p>19 I had with Guy Cowan would be privileged.</p> <p>20 Q. At the time that he approached you</p> <p>21 had you been appointed --</p> <p>22 A. No.</p> <p>23 Q. -- in any capacity?</p> <p>24 MR. McDONALD: Let him finish the</p> <p>25 question.</p>
<p style="text-align: right;">Page 14</p> <p>1 G. ROBINSON</p> <p>2 you voted as that entity in its capacity as a</p> <p>3 contributory to Ascentra Holdings, Inc. to</p> <p>4 appoint you as the voluntary liquidator of</p> <p>5 that company, is that right?</p> <p>6 A. Yes.</p> <p>7 Q. Do you know who the principal was</p> <p>8 at -- I think you said INTL?</p> <p>9 A. (Nodding head affirmatively.)</p> <p>10 Q. -- who acted to appoint you the</p> <p>11 voluntary liquidator of Ascentra Holdings,</p> <p>12 Inc.?</p> <p>13 A. I do. That was Marty Matthews.</p> <p>14 THE COURT REPORTER: Can you spell</p> <p>15 the name?</p> <p>16 THE WITNESS: Marty. It's Martin</p> <p>17 Matthews, but he goes as Marty.</p> <p>18 M-A-R-T-Y.</p> <p>19 Q. And how did it come to be; can you</p> <p>20 recall the circumstances under which you</p> <p>21 became the voluntary liquidator of Ascentra</p> <p>22 Holdings, Inc.? Do you recall who approached</p> <p>23 you?</p> <p>24 A. I was approached by Campbells</p> <p>25 attorneys in the Cayman Islands.</p>	<p style="text-align: right;">Page 16</p> <p>1 G. ROBINSON</p> <p>2 THE WITNESS: Sorry.</p> <p>3 Q. At the time that he approached you</p> <p>4 about the possibility of serving, is it your</p> <p>5 contention that there was some type of</p> <p>6 privilege relationship?</p> <p>7 MR. McDONALD: John, I've given you</p> <p>8 a lot of latitude here. We have</p> <p>9 specific topics on the 30(b)(6). He's</p> <p>10 not here, again, in his personal</p> <p>11 capacity. He's here as the</p> <p>12 representative to answer questions</p> <p>13 concerning specific topics, not the</p> <p>14 circumstances surrounding his</p> <p>15 appointment.</p> <p>16 MR. MORRIS: Okay.</p> <p>17 MR. McDONALD: I've given you a lot</p> <p>18 of latitude up until now, but you're</p> <p>19 going beyond the scope of this</p> <p>20 deposition.</p> <p>21 MR. MORRIS: Okay. Is it your</p> <p>22 position that I'm not allowed to ask any</p> <p>23 questions unless they specifically</p> <p>24 relate to the topics?</p> <p>25 MR. McDONALD: Yes. We have</p>

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<p style="text-align: right;">Page 17</p> <p>1 G. ROBINSON</p> <p>2 specific enumerated topics. We've gone</p> <p>3 over this with the Court. Our objection</p> <p>4 to four of them still stands, and we'll</p> <p>5 deal with them when you get to them.</p> <p>6 But I've given you a lot of latitude.</p> <p>7 Again, he is not here in his individual</p> <p>8 personal capacity.</p> <p>9 MR. MORRIS: I appreciate that.</p> <p>10 And I am going to tell you our position</p> <p>11 is that the 30(b)(6) topics are the</p> <p>12 topics in which he had an affirmative</p> <p>13 obligation to educate himself. It</p> <p>14 doesn't mean that I'm not allowed to ask</p> <p>15 any question. I've never in my life</p> <p>16 heard in a 30(b)(6) deposition that I</p> <p>17 can't ask a question. Because otherwise</p> <p>18 I would have had to put in the topic</p> <p>19 "Background," how were you appointed.</p> <p>20 Like, I might as well have put in my</p> <p>21 outline.</p> <p>22 But that's our position. I have</p> <p>23 heard your position. I am going to ask</p> <p>24 my questions, and you can feel free to</p> <p>25 direct him not to answer any time you</p>	<p style="text-align: right;">Page 19</p> <p>1 G. ROBINSON</p> <p>2 to do any work with respect to Ascentra prior</p> <p>3 to the time you accepted the appointment of</p> <p>4 voluntary liquidator on or about June 1, 2021?</p> <p>5 MR. McDONALD: Objection.</p> <p>6 Direct the witness not to answer.</p> <p>7 Q. Are you going to follow your</p> <p>8 counsel's advice?</p> <p>9 A. Yes.</p> <p>10 Q. Did you ever do any work on behalf</p> <p>11 of Ascentra prior to June 1, 2021?</p> <p>12 A. No.</p> <p>13 DIR Q. Did you have any relationship with</p> <p>14 any of Ascentra's principals prior to the time</p> <p>15 you accepted the appointment on June 1, 2021?</p> <p>16 MR. McDONALD: Objection.</p> <p>17 Direct the witness not to answer.</p> <p>18 Q. Are you going to follow your</p> <p>19 counsel's advice?</p> <p>20 A. Yes.</p> <p>21 Q. Did your work as the voluntary</p> <p>22 liquidator of IR-P concern Ascentra in any way</p> <p>23 prior to June 1, 2021?</p> <p>24 MR. McDONALD: Objection to form.</p> <p>25 A. You're going to have to rephrase</p>
<p style="text-align: right;">Page 18</p> <p>1 G. ROBINSON</p> <p>2 want.</p> <p>3 Is that fair?</p> <p>4 MR. McDONALD: Fair.</p> <p>5 MR. MORRIS: Okay.</p> <p>6 DIR Q. Do you recall what Mr. Cowan told</p> <p>7 you initially when he approached you about the</p> <p>8 possibility of serving as the voluntary</p> <p>9 liquidator of Ascentra?</p> <p>10 MR. McDONALD: Objection.</p> <p>11 Direct the witness not to answer.</p> <p>12 Q. Are you going to follow your</p> <p>13 counsel's advice?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. How long in advance of your</p> <p>16 acceptance of the appointment did Mr. Cowan</p> <p>17 approach you?</p> <p>18 MR. McDONALD: Objection to form.</p> <p>19 A. So when -- you're asking me when I</p> <p>20 was first approached by Campbells prior to me</p> <p>21 being appointed?</p> <p>22 Q. Yes, sir.</p> <p>23 A. This is from memory. I would say</p> <p>24 it would be in some period of time in 2020.</p> <p>25 DIR Q. Okay. Were you engaged by anybody</p>	<p style="text-align: right;">Page 20</p> <p>1 G. ROBINSON</p> <p>2 that question. It doesn't make sense.</p> <p>3 Q. Okay. I think you mentioned -- you</p> <p>4 mentioned that you became the voluntary</p> <p>5 liquidator of IR-P on May 28, 2021.</p> <p>6 A. Okay.</p> <p>7 Q. In your capacity as the voluntary</p> <p>8 liquidator of that entity, did you do anything</p> <p>9 that concerned Ascentra before you accepted</p> <p>10 the appointment as Ascentra's voluntary</p> <p>11 liquidator?</p> <p>12 MR. McDONALD: Objection to form.</p> <p>13 Q. And this is where you can answer.</p> <p>14 If you understand. If you don't, I can try</p> <p>15 again.</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you know when --</p> <p>18 withdrawn.</p> <p>19 Has Ascentra -- withdrawn.</p> <p>20 Is Ascentra a holding company?</p> <p>21 MR. McDONALD: Objection to form.</p> <p>22 MR. MORRIS: Withdrawn.</p> <p>23 Q. Do you understand what a holding</p> <p>24 company is, sir?</p> <p>25 A. Yes.</p>



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<p style="text-align: right;">Page 21</p> <p>1 G. ROBINSON</p> <p>2 Q. What's your understanding of a</p> <p>3 holding company?</p> <p>4 A. A holding company is a, what I</p> <p>5 would say is the top co. of a group structure,</p> <p>6 and underneath will be numerous entities, and</p> <p>7 the shareholding flows eventually to the top</p> <p>8 co.</p> <p>9 Q. Is it your understanding that</p> <p>10 Ascentra was a holding company?</p> <p>11 A. I considered it a holding co., yes.</p> <p>12 Q. And it had certain entities that it</p> <p>13 directly or indirectly owned that -- conducted</p> <p>14 the operations of the Ascentra enterprise, is</p> <p>15 that fair?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. I am going to use the phrase</p> <p>18 "Ascentra" to refer to the whole enterprise;</p> <p>19 not just Ascentra Holdings, Inc., but also to</p> <p>20 its direct and indirect affiliates who carried</p> <p>21 out the operations.</p> <p>22 Is that fair?</p> <p>23 A. Yes.</p> <p>24 Q. And if I want to refer specifically</p> <p>25 to the entity that filed the Chapter 15</p>	<p style="text-align: right;">Page 23</p> <p>1 G. ROBINSON</p> <p>2 was conducted exclusively through the names of</p> <p>3 the direct and indirect subsidiaries?</p> <p>4 MR. McDONALD: Objection.</p> <p>5 I direct the witness not to answer.</p> <p>6 (Reporter requests clarification.)</p> <p>7 Q. Are you going to follow counsel's</p> <p>8 advice?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Do you serve as a liquidator</p> <p>11 for any entity that was directly or indirectly</p> <p>12 controlled by Ascentra Holdings, Inc.?</p> <p>13 A. Yes.</p> <p>14 Q. Can you identify each entity?</p> <p>15 A. I am currently the official</p> <p>16 liquidator of HEC International Limited.</p> <p>17 I was the voluntary liquidator of</p> <p>18 Interush (Singapore), which is now closed and</p> <p>19 been dissolved.</p> <p>20 And I believe I am the liquidator</p> <p>21 of -- at the HEC International (Taiwan)</p> <p>22 company.</p> <p>23 Q. Did you become -- apologies.</p> <p>24 Was that in an official capacity or</p> <p>25 as a voluntary liquidator?</p>
<p style="text-align: right;">Page 22</p> <p>1 G. ROBINSON</p> <p>2 proceeding in New York, I'll say "Ascentra</p> <p>3 Holdings, Inc."</p> <p>4 A. Okay.</p> <p>5 Q. That's the distinction that I am</p> <p>6 making.</p> <p>7 A. Okay. Yes.</p> <p>8 Q. So with that distinction, do you --</p> <p>9 is Ascentra engaged in any operations today?</p> <p>10 A. (No response.)</p> <p>11 MR. MORRIS: Withdrawn.</p> <p>12 Q. As of today is Ascentra engaged in</p> <p>13 any operations other than those that are</p> <p>14 attendant to its liquidation?</p> <p>15 MR. McDONALD: Objection to form.</p> <p>16 A. No.</p> <p>17 Q. Okay. Do you know when Ascentra</p> <p>18 ceased operating as a commercial entity?</p> <p>19 MR. McDONALD: Objection to form.</p> <p>20 A. My understanding is early 2021.</p> <p>21 DIR Q. Do you know whether Ascentra</p> <p>22 Holdings Inc. -- withdrawn.</p> <p>23 Prior to that time, do you know</p> <p>24 whether Ascentra Holdings, Inc. conducted</p> <p>25 business in its own name or whether business</p>	<p style="text-align: right;">Page 24</p> <p>1 G. ROBINSON</p> <p>2 MR. McDONALD: Objection to form.</p> <p>3 A. For which entity? Sorry.</p> <p>4 Q. Fair. Let's take them one at a</p> <p>5 time.</p> <p>6 A. Okay.</p> <p>7 Q. I think you said HGC?</p> <p>8 MR. McDONALD: HEC, I believe.</p> <p>9 Q. Did you ever serve as an official</p> <p>10 liquidator for that entity?</p> <p>11 A. HEC International I was the</p> <p>12 voluntary liquidator, and now I'm the official</p> <p>13 liquidator.</p> <p>14 Q. And did that happen after you</p> <p>15 became the official liquidator of Ascentra</p> <p>16 Holdings, Inc. or before?</p> <p>17 A. After.</p> <p>18 Q. The same question with respect to</p> <p>19 Interush (Singapore). Before --</p> <p>20 Withdrawn. One question at a time.</p> <p>21 Did you become -- did you ever</p> <p>22 become an official liquidator of Interush</p> <p>23 (Singapore)?</p> <p>24 A. No.</p> <p>25 Q. Did you serve as the voluntary</p>

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<p style="text-align: right;">Page 25</p> <p>1 G. ROBINSON</p> <p>2 liquidator of that entity?</p> <p>3 A. Yes.</p> <p>4 Q. And were you appointed voluntary</p> <p>5 liquidator of that entity before or after you</p> <p>6 became the official liquidator of Ascentra</p> <p>7 Holdings, Inc.?</p> <p>8 A. After.</p> <p>9 Q. And then I think the last one was</p> <p>10 the Taiwan entity, is that right?</p> <p>11 A. Correct.</p> <p>12 Q. Were you ever appointed the</p> <p>13 official liquidator of that entity?</p> <p>14 A. I'm not trying to be difficult on</p> <p>15 the question. The Taiwanese liquidation</p> <p>16 process is a very unusual and complicated one.</p> <p>17 I would say it was -- it would be considered</p> <p>18 as like an official liquidation, is how I</p> <p>19 would look at it. Yes.</p> <p>20 Q. I appreciate that. I am going to</p> <p>21 confess to having no familiarity with Taiwan</p> <p>22 insolvency proceedings.</p> <p>23 A. I am still struggling, yes.</p> <p>24 Q. Did that occur after you were</p> <p>25 appointed the official liquidator in the</p>	<p style="text-align: right;">Page 27</p> <p>1 G. ROBINSON</p> <p>2 just identified subject to a liquidation</p> <p>3 proceeding in the Cayman Islands?</p> <p>4 A. Yes.</p> <p>5 Q. Which one?</p> <p>6 A. HEC International.</p> <p>7 Q. And in your capacity as the</p> <p>8 official liquidator of that entity have you</p> <p>9 declared that entity to be solvent, insolvent</p> <p>10 or doubtful solvency?</p> <p>11 A. Solvent.</p> <p>12 Q. Do you recall when that entity was</p> <p>13 placed into liquidation under the court</p> <p>14 supervision of the Cayman Islands?</p> <p>15 A. 7th of December 2021.</p> <p>16 THE COURT REPORTER: Can you say</p> <p>17 the date again?</p> <p>18 THE WITNESS: 7th of December 2021.</p> <p>19 MR. MORRIS: Okay. I am going to</p> <p>20 mark as Robinson exhibit 1 the amended</p> <p>21 notice of deposition.</p> <p>22 (Robinson Exhibit 1, Amended Notice</p> <p>23 of Deposition of Ascentra Holdings, Inc.</p> <p>24 was marked for identification.)</p> <p>25 BY MR. MORRIS:</p>
<p style="text-align: right;">Page 26</p> <p>1 G. ROBINSON</p> <p>2 Ascentra Holdings, Inc. case?</p> <p>3 A. After.</p> <p>4 Q. Did the same people who appointed</p> <p>5 you as the voluntary liquidator of Ascentra</p> <p>6 Holdings, Inc. also appoint you as the</p> <p>7 voluntary liquidator of the three entities you</p> <p>8 just identified?</p> <p>9 MR. McDONALD: Objection to form.</p> <p>10 MR. MORRIS: Withdrawn.</p> <p>11 Q. Did the same people and entities</p> <p>12 that you identified earlier as having</p> <p>13 appointed you as the voluntary liquidator of</p> <p>14 Ascentra Holdings, Inc. also appoint you as</p> <p>15 the voluntary liquidator of the three entities</p> <p>16 you just identified?</p> <p>17 A. No.</p> <p>18 Q. Who first appointed you the</p> <p>19 voluntary liquidator of International Limited?</p> <p>20 MR. McDONALD: Objection to form.</p> <p>21 Q. If you recall.</p> <p>22 A. So say the question again?</p> <p>23 Q. You know what? It's okay. I'm</p> <p>24 just going to move on.</p> <p>25 Are any of the three entities you</p>	<p style="text-align: right;">Page 28</p> <p>1 G. ROBINSON</p> <p>2 Q. Mr. Robinson, do you have exhibit 1</p> <p>3 in front of you?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Have you seen this before?</p> <p>6 A. I believe I have, yes.</p> <p>7 Q. Do you know what it is?</p> <p>8 A. I'm reading the title. It says</p> <p>9 Amended Notice of Deposition of Ascentra</p> <p>10 Holdings, Inc.</p> <p>11 Q. Okay. And if you can turn to --</p> <p>12 the pages aren't numbered, but I think it's</p> <p>13 the third page of the document, at the bottom</p> <p>14 you'll see a heading "Amended Topics" --</p> <p>15 A. Yes.</p> <p>16 Q. -- that go on through the rest of</p> <p>17 the document.</p> <p>18 A. Okay.</p> <p>19 Q. Have you seen those topics before?</p> <p>20 A. Yes.</p> <p>21 Q. And when did you see them for the</p> <p>22 first time, if you recall?</p> <p>23 A. I don't -- from memory I couldn't</p> <p>24 give you a specific date. I know SPGK filed</p> <p>25 its motion to terminate the recognition at the</p>

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<p style="text-align: right;">Page 29</p> <p>1 G. ROBINSON</p> <p>2 end of June 2023, so it's going to be sometime</p> <p>3 after that. And I couldn't give you a</p> <p>4 specific date. I'm sorry.</p> <p>5 Q. Subject to whatever objections or</p> <p>6 directions you received from counsel, are you</p> <p>7 otherwise prepared to answer questions on the</p> <p>8 topics set forth in exhibit 1?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. Did you do anything to</p> <p>11 prepare for today's deposition?</p> <p>12 A. I did, yes.</p> <p>13 Q. What did you do?</p> <p>14 A. I met with my counsel yesterday in</p> <p>15 New York. And I also reviewed and kind of</p> <p>16 refreshed my memory on past documents. And</p> <p>17 specific documents would be the status reports</p> <p>18 filed in the Chapter 15 process; the two joint</p> <p>19 official liquidator reports that have been</p> <p>20 filed in the Cayman courts; my deposition --</p> <p>21 not deposition. My declaration that I filed</p> <p>22 regarding the application for Chapter 15 back</p> <p>23 in October 2021.</p> <p>24 I reviewed the, our objection to</p> <p>25 the motion to remove the restraint, which is</p>	<p style="text-align: right;">Page 31</p> <p>1 G. ROBINSON</p> <p>2 A. Not -- no, not specific documents.</p> <p>3 Q. Did you speak with anybody who is</p> <p>4 or purports to be a creditor in connection</p> <p>5 with your preparation for today's deposition?</p> <p>6 MR. McDONALD: Objection to form.</p> <p>7 A. No.</p> <p>8 Q. Did you speak with anybody who is</p> <p>9 or who claims to be a contributory to Ascentra</p> <p>10 Holdings, Inc. in connection with the</p> <p>11 preparation of your deposition?</p> <p>12 A. No.</p> <p>13 Q. Have you spoken with anybody, with</p> <p>14 any person or entity, who represents --</p> <p>15 withdrawn.</p> <p>16 Going back to June 1, when you were</p> <p>17 appointed the voluntary liquidator, and</p> <p>18 thinking about the people who appointed you or</p> <p>19 appointed you on behalf of corporate entities,</p> <p>20 have you spoken with any of those people in</p> <p>21 connection with today's deposition?</p> <p>22 A. No.</p> <p>23 Q. What do you do for a living, sir?</p> <p>24 A. I am an insolvency practitioner.</p> <p>25 Q. And do you work for a company?</p>
<p style="text-align: right;">Page 30</p> <p>1 G. ROBINSON</p> <p>2 dated September 23.</p> <p>3 And I also reviewed the amended</p> <p>4 written statement of the claim that Ascentra</p> <p>5 has filed against SPGK in the Cayman courts,</p> <p>6 which is dated 11th of October 2023.</p> <p>7 And I also looked at some old</p> <p>8 financial kind of Excel spreadsheet documents</p> <p>9 that we received from the company when we got</p> <p>10 appointed.</p> <p>11 Q. What Excel spreadsheet documents</p> <p>12 are you referring to?</p> <p>13 A. These are documents that we</p> <p>14 obtained that -- at the beginning of your</p> <p>15 appointment from Whinney, who was the account</p> <p>16 manager, that does set out a summary of</p> <p>17 creditors of Ascentra.</p> <p>18 Q. And did you rely on that Excel</p> <p>19 spreadsheet to identify Ascentra Holdings,</p> <p>20 Inc.'s creditors?</p> <p>21 A. It was one of the documents that</p> <p>22 we -- we used.</p> <p>23 Q. Do you recall any other documents</p> <p>24 that you reviewed in connection with your</p> <p>25 preparation for today's deposition?</p>	<p style="text-align: right;">Page 32</p> <p>1 G. ROBINSON</p> <p>2 A. Yes.</p> <p>3 Q. What company do you work for?</p> <p>4 A. That is Crowe, which is C-R-O-W-E,</p> <p>5 Cayman Limited.</p> <p>6 Q. And do you have a role or a title</p> <p>7 or a position at Crowe Cayman Limited?</p> <p>8 A. Director.</p> <p>9 Q. When did you become a director at</p> <p>10 Crowe?</p> <p>11 A. That was November 2019.</p> <p>12 Q. How long have you been affiliated</p> <p>13 with Crowe?</p> <p>14 A. Since that date.</p> <p>15 Q. What does it mean to be an</p> <p>16 insolvency practitioner?</p> <p>17 A. How long have you got?</p> <p>18 What does it mean to be an</p> <p>19 insolvency practitioner?</p> <p>20 Q. Mm-hmm.</p> <p>21 THE COURT REPORTER: "Yes"?</p> <p>22 BY MR. MORRIS:</p> <p>23 Q. Yes.</p> <p>24 A. I am appointed official liquidator</p> <p>25 or voluntary liquidator of Cayman entities. I</p>

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<p>1 G. ROBINSON</p> <p>2 also potentially assist companies with</p> <p>3 financial matters.</p> <p>4 Q. And how long have you been an</p> <p>5 insolvency practitioner? When did you first</p> <p>6 become one?</p> <p>7 A. Well, are you asking me when I</p> <p>8 became licensed or when I -- how long have I</p> <p>9 worked in insolvency matters?</p> <p>10 Q. We'll get to the license in a</p> <p>11 moment.</p> <p>12 A. Okay.</p> <p>13 Q. When did you first start working in</p> <p>14 the insolvency space?</p> <p>15 A. In 1993.</p> <p>16 Q. Can you describe for me generally</p> <p>17 your educational background?</p> <p>18 A. Yes. I'm obviously English, so</p> <p>19 I've got O levels, A levels, and a degree.</p> <p>20 And I also have accountancy qualifications,</p> <p>21 but I'm not a chartered accountant. And I</p> <p>22 also have an insolvency qualification, formal</p> <p>23 insolvency qualification, from the U.K.</p> <p>24 Q. So you're a chartered accountant?</p> <p>25 A. I am not a chartered accountant,</p>	<p>1 G. ROBINSON</p> <p>2 Who were you employed by before you</p> <p>3 joined Crowe in 2019? Can you give me -- let</p> <p>4 me back up.</p> <p>5 From 1993, give me an overview of</p> <p>6 your professional history and affiliations.</p> <p>7 A. I initially worked for a company</p> <p>8 called Casson Beckman &amp; Partners in</p> <p>9 Manchester.</p> <p>10 I left them and went to PwC,</p> <p>11 PricewaterhouseCoopers.</p> <p>12 I then left PricewaterhouseCoopers</p> <p>13 and went to a company called RPG.</p> <p>14 After RPGK I went to PKF. After</p> <p>15 PKF I went to Kroll, which is K-R-O-L-L.</p> <p>16 I left Kroll in 2009 and went to</p> <p>17 the Cayman Islands, where in the Cayman</p> <p>18 Islands I worked for Robinson &amp; Hunter until</p> <p>19 2012.</p> <p>20 I then went back to the U.K. in</p> <p>21 2012. I worked for myself and I also worked</p> <p>22 for a company called BB Financial Services.</p> <p>23 In 2014 I went back to the Cayman</p> <p>24 Islands. I then worked for Chris Johnson</p> <p>25 Associates up until I started work for Crowe</p>
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<p>1 G. ROBINSON</p> <p>2 no. I have accountancy qualifications, but I</p> <p>3 am not a chartered accountant.</p> <p>4 Q. Okay.</p> <p>5 THE COURT REPORTER: Did you say O</p> <p>6 level and A level?</p> <p>7 THE WITNESS: Yes. O level and</p> <p>8 then A level, yes.</p> <p>9 Q. And you have a license?</p> <p>10 A. I've got a -- yes, I have a</p> <p>11 U.K. license through the Insolvency</p> <p>12 Practitioners Association in the U.K.</p> <p>13 Q. When did you get that?</p> <p>14 A. I passed my qualification in 2000.</p> <p>15 I got my license in 2008.</p> <p>16 Q. What does one need to do to obtain</p> <p>17 a license?</p> <p>18 A. Short answer, certain amount of</p> <p>19 hours worked and some exams that you need to</p> <p>20 pass.</p> <p>21 Q. So is it fair to say that you</p> <p>22 worked in the insolvency space for about 15</p> <p>23 years before you obtained your license?</p> <p>24 A. Seven and eight is 15, yes.</p> <p>25 Q. Exactly.</p>	<p>1 G. ROBINSON</p> <p>2 Cayman Limited.</p> <p>3 Q. Okay. When did you receive your</p> <p>4 first appointment as an official liquidator in</p> <p>5 the Cayman Islands?</p> <p>6 A. That would be two thousand and --</p> <p>7 it's going to be late 2009 or early 2010.</p> <p>8 Q. Can you give me an estimate of how</p> <p>9 many times you've been appointed an official</p> <p>10 liquidator by the Cayman courts?</p> <p>11 A. Ten to 15.</p> <p>12 Q. And does that include the several</p> <p>13 that you have mentioned today?</p> <p>14 MR. McDONALD: Objection to form.</p> <p>15 A. Yes.</p> <p>16 Q. Have you ever been appointed a</p> <p>17 liquidator in any jurisdiction other than the</p> <p>18 United Kingdom or the Cayman Islands?</p> <p>19 A. Well, the companies we referred to</p> <p>20 today would be Singapore and Taiwan. No.</p> <p>21 Q. Prior to this case have you ever</p> <p>22 been involved in a Chapter 15 proceeding in</p> <p>23 the United States?</p> <p>24 A. No.</p> <p>25 Q. I want to see if we can just make</p>



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<p>1 G. ROBINSON</p> <p>2 sure that we have an understanding of kind of</p> <p>3 where we started earlier with respect to the</p> <p>4 corporate organization. And I'm going to</p> <p>5 just --</p> <p>6 MR. MORRIS: Let's mark as exhibit</p> <p>7 2 a portion of a document that was filed</p> <p>8 in the Chapter 7 -- Chapter 15</p> <p>9 proceeding at Docket No. 77. It's just</p> <p>10 an organizational chart that I am going</p> <p>11 to be focused on.</p> <p>12 THE WITNESS: Okay.</p> <p>13 (Robinson Exhibit 2, Organizational</p> <p>14 chart was marked for identification.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. I am going to represent to you that</p> <p>17 we actually copied this from a filing I think</p> <p>18 that originated in the Cayman Islands but that</p> <p>19 was filed in New York. I think it was part of</p> <p>20 the complaint that was filed in the Cayman</p> <p>21 Islands.</p> <p>22 Have you seen this organizational</p> <p>23 chart before?</p> <p>24 A. Yes.</p> <p>25 Q. And did you personally, in your</p>	<p>1 G. ROBINSON</p> <p>2 your understanding of what has changed?</p> <p>3 A. Basically, Mari Matthews holds her</p> <p>4 50 percent shares in a separate entity.</p> <p>5 Q. Okay. But she still now, instead</p> <p>6 of directly, indirectly owns 50 percent of</p> <p>7 International Media Holdings Inc. --</p> <p>8 International Media Holdings, LLC; is that</p> <p>9 your understanding?</p> <p>10 MR. McDONALD: Objection to form.</p> <p>11 A. She -- she doesn't own any -- she's</p> <p>12 not a shareholder of INTL Media anymore. But</p> <p>13 she's a shareholder in her own right of IR-P</p> <p>14 Holdings.</p> <p>15 Q. Okay.</p> <p>16 A. Through a separate entity to INTL.</p> <p>17 Q. Are there any other changes that</p> <p>18 you're aware of?</p> <p>19 A. No. That looks -- that looks okay.</p> <p>20 Q. Okay. So now, just to make sure I</p> <p>21 understood what you said earlier, if we look</p> <p>22 at the chart, you'll see Ascentra Holdings,</p> <p>23 Inc. is a Cayman Islands entity there; and</p> <p>24 above that there are three shareholders, three</p> <p>25 direct shareholders: IR-P Holdings Inc.,</p>
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<p>1 G. ROBINSON</p> <p>2 capacity as the official liquidator of</p> <p>3 Ascentra Holdings, Inc., authorize it to be</p> <p>4 filed on behalf of that entity?</p> <p>5 MR. McDONALD: Objection to form.</p> <p>6 A. Filed in which proceeding?</p> <p>7 Q. In the Cayman Islands.</p> <p>8 A. Yes.</p> <p>9 Q. And did you also authorize it to be</p> <p>10 filed in the Chapter 15 proceeding in</p> <p>11 New York?</p> <p>12 A. Yes.</p> <p>13 Q. To the best of your knowledge, is</p> <p>14 this corporate organizational chart accurate?</p> <p>15 A. There is one error on this chart.</p> <p>16 Q. Can you just point that out to me,</p> <p>17 please?</p> <p>18 A. The -- the shareholding in IR-P for</p> <p>19 INTL Media has changed since this document has</p> <p>20 been filed.</p> <p>21 Q. So I think you're referring to the</p> <p>22 box that's below Martin Matthews and Mari</p> <p>23 Matthews, is that right?</p> <p>24 A. Correct. Yes.</p> <p>25 Q. Okay. And can you describe for me</p>	<p>1 G. ROBINSON</p> <p>2 International Media Holdings, LLC, and then a</p> <p>3 box called "Management and Related Parties."</p> <p>4 Do I have that right?</p> <p>5 A. Yes.</p> <p>6 Q. And are those the people and the</p> <p>7 entities that appointed you as the voluntary</p> <p>8 liquidator back in June of 2021?</p> <p>9 A. Yeah. I was appointed through the</p> <p>10 shareholder resolutions. Yes.</p> <p>11 Q. Yes. And IR-P Holdings, Inc.</p> <p>12 (Cayman Islands), that's one that you</p> <p>13 mentioned earlier is in liquidation, is that</p> <p>14 right?</p> <p>15 A. Yes.</p> <p>16 Q. And that's a solvent -- that's</p> <p>17 subject to a solvency certificate, is that</p> <p>18 right?</p> <p>19 MR. McDONALD: Objection to form.</p> <p>20 A. Yes.</p> <p>21 Q. Interush I think you said has been</p> <p>22 dissolved, is that right?</p> <p>23 A. Interush -- sorry. Interush</p> <p>24 (Singapore), yes.</p> <p>25 Q. Yes. Sorry for the ambiguity. Let</p>

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<p style="text-align: right;">Page 41</p> <p>1 G. ROBINSON</p> <p>2 me ask the question again.</p> <p>3 Interush Singapore has been</p> <p>4 dissolved, is that right?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And HEC International</p> <p>7 Company Limited in Taiwan, that's also subject</p> <p>8 to liquidation, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. HEC International Limited</p> <p>11 Cayman Islands, that's also subject to</p> <p>12 judicially supervised liquidation proceedings</p> <p>13 in the Cayman Islands, right?</p> <p>14 A. Yes.</p> <p>15 Q. And you serve as the official</p> <p>16 liquidator of that entity?</p> <p>17 A. Yes.</p> <p>18 Q. And that entity is also subject to</p> <p>19 a solvency certificate, correct?</p> <p>20 MR. McDONALD: Object to the form.</p> <p>21 A. Yes.</p> <p>22 Q. I think there's a statement in</p> <p>23 documents somewhere that HEC International,</p> <p>24 Limited Singapore branch has stopped doing</p> <p>25 business.</p>	<p style="text-align: right;">Page 43</p> <p>1 G. ROBINSON</p> <p>2 Ascentra over the years in one way, shape or</p> <p>3 form.</p> <p>4 Q. On the lower left-hand corner of</p> <p>5 this organizational chart there's four</p> <p>6 entities under the name Ted Sanders.</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Do you have an understanding of who</p> <p>10 Mr. Sanders is?</p> <p>11 A. Yes.</p> <p>12 Q. What's your understanding of who</p> <p>13 Mr. Sanders is in relation to this</p> <p>14 organizational chart?</p> <p>15 A. Mr. Sanders was the former CFO of</p> <p>16 Ascentra.</p> <p>17 Q. Did he ever serve as a director, to</p> <p>18 the best of your knowledge?</p> <p>19 A. Of Ascentra?</p> <p>20 Q. Let me ask a better question.</p> <p>21 Do you know whether Mr. Sanders</p> <p>22 ever served as a director of Ascentra</p> <p>23 Holdings, Inc.?</p> <p>24 A. No.</p> <p>25 Q. Do you know if Mr. Sanders ever</p>
<p style="text-align: right;">Page 42</p> <p>1 G. ROBINSON</p> <p>2 Is my recollection about that</p> <p>3 correct?</p> <p>4 MR. McDONALD: Object to the form.</p> <p>5 A. That is correct.</p> <p>6 Q. Is that entity the subject of any</p> <p>7 liquidation proceeding or has it simply ceased</p> <p>8 doing business?</p> <p>9 A. It's not -- it's not in a</p> <p>10 liquidation process. And that branch has been</p> <p>11 closed.</p> <p>12 Q. So am I right that all of the</p> <p>13 entities that are directly beneath Ascentra</p> <p>14 Holdings, Inc. Cayman Islands served as</p> <p>15 operating companies of Ascentra Holdings,</p> <p>16 Inc. before it ceased to do business in</p> <p>17 early 2021?</p> <p>18 MR. McDONALD: Objection to form.</p> <p>19 A. They -- they -- I would -- they</p> <p>20 were part -- they were part of the group and I</p> <p>21 am sure at some time over the years --</p> <p>22 (Reporter requests clarification.)</p> <p>23 A. Those entities underneath Ascentra</p> <p>24 are part of the group, yes. And they've all</p> <p>25 been part of the operational business of</p>	<p style="text-align: right;">Page 44</p> <p>1 G. ROBINSON</p> <p>2 served as a director -- withdrawn.</p> <p>3 I am going to refer to the one,</p> <p>4 two, three, four, five, six -- seven entities</p> <p>5 below the Ascentra Holdings, Inc. box as</p> <p>6 "Ascentra's subsidiaries."</p> <p>7 Is that fair?</p> <p>8 A. Okay.</p> <p>9 Q. Do you know whether Mr. Sanders</p> <p>10 ever served as the director of any of</p> <p>11 Ascentra's subsidiaries?</p> <p>12 A. From my memory, no.</p> <p>13 Q. Do you know what period of time</p> <p>14 Mr. Sanders served as the CFO of Ascentra?</p> <p>15 A. I know it was -- I don't know the</p> <p>16 exact start date. I know he was involved from</p> <p>17 2018 up until his resignation in May 2021, and</p> <p>18 that he could possibly be involved in the</p> <p>19 group before April 2018. Sorry, I can't fully</p> <p>20 recall.</p> <p>21 Q. Do you know, did he serve as the</p> <p>22 CFO of Ascentra Holdings, Inc.?</p> <p>23 A. Of Ascentra.</p> <p>24 Q. And when you use the phrase</p> <p>25 "Ascentra" in the context of Mr. Sanders'</p>

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<p style="text-align: right;">Page 45</p> <p>1 G. ROBINSON</p> <p>2 role, what do you mean?</p> <p>3 MR. McDONALD: Object to the form.</p> <p>4 A. Can you just explain the question</p> <p>5 better for me, please?</p> <p>6 Q. Yes. I'll try again.</p> <p>7 You've got Ascentra Holdings,</p> <p>8 Inc. and then you've got the seven</p> <p>9 subsidiaries. Right?</p> <p>10 A. Mm-hmm. Yes.</p> <p>11 Q. Okay. Let's take them separately.</p> <p>12 Do you know whether Mr. Sanders</p> <p>13 ever served as the CFO of any of the seven</p> <p>14 subsidiaries?</p> <p>15 MR. McDONALD: Objection to form.</p> <p>16 A. In my view, Mr. Ted Sanders was the</p> <p>17 CFO of Ascentra group, and that included</p> <p>18 Ascentra Holdings, all the subsidiaries, and</p> <p>19 also SPGK.</p> <p>20 MR. McDONALD: John, you're going</p> <p>21 way off topic here. Can you please</p> <p>22 explain how any of this line of</p> <p>23 questioning relates to any of the topics</p> <p>24 that are set forth in the deposition</p> <p>25 notice?</p>	<p style="text-align: right;">Page 47</p> <p>1 G. ROBINSON</p> <p>2 had a direct or indirect ownership interest in</p> <p>3 any of the four entities under Mr. Sanders'</p> <p>4 name?</p> <p>5 MR. McDONALD: Objection to form.</p> <p>6 A. The two entities at the bottom</p> <p>7 there, AOS Property Ventures, and they</p> <p>8 obviously -- it's got formerly known as</p> <p>9 Interush, Inc., and then there's also Interush</p> <p>10 International, they may have been set over the</p> <p>11 side of the structure at one time, but I can't</p> <p>12 recall from memory.</p> <p>13 Q. Okay. Is it fair to say that this</p> <p>14 chart doesn't depict any direct or indirect</p> <p>15 relationship between any of the four entities</p> <p>16 under Mr. Sanders' names and any of the</p> <p>17 Ascentra Holdings entities, is that fair?</p> <p>18 MR. McDONALD: Objection to form.</p> <p>19 A. Just say that again for me, please?</p> <p>20 Q. Yeah. I am talking specifically</p> <p>21 now of ownership.</p> <p>22 A. Okay.</p> <p>23 Q. Okay. Do you have any reason to</p> <p>24 believe, as you sit here today, that Ascentra</p> <p>25 Holdings, Inc. or any of its subsidiaries ever</p>
<p style="text-align: right;">Page 46</p> <p>1 G. ROBINSON</p> <p>2 MR. MORRIS: I will tell you that</p> <p>3 it goes to, number 1, the likelihood of</p> <p>4 success on the merits and the</p> <p>5 relationship of these entities. And</p> <p>6 number 2, it's background.</p> <p>7 And if you want to direct him not</p> <p>8 to answer, you're free to do that at any</p> <p>9 time. I don't think this stuff is</p> <p>10 controversial, but you'll defend your</p> <p>11 witness as you wish.</p> <p>12 MR. McDONALD: It goes to number 1,</p> <p>13 the certificate of solvency?</p> <p>14 MR. MORRIS: No, the last four.</p> <p>15 The last four questions. Likelihood of</p> <p>16 success on the merits and facts relating</p> <p>17 thereto.</p> <p>18 MR. McDONALD: Again, we're giving</p> <p>19 you some latitude, but it's going to be</p> <p>20 very limited.</p> <p>21 MR. MORRIS: You'll do what you do,</p> <p>22 and I'll do what I do, and we'll do it</p> <p>23 respectfully.</p> <p>24 MR. McDONALD: Okay.</p> <p>25 Q. Do you know whether Ascentra ever</p>	<p style="text-align: right;">Page 48</p> <p>1 G. ROBINSON</p> <p>2 had a direct or indirect ownership interest in</p> <p>3 any of the four entities under Mr. Sanders'</p> <p>4 name?</p> <p>5 MR. McDONALD: Objection; form.</p> <p>6 A. Like I said, they might have had</p> <p>7 some ownership of these two at one time</p> <p>8 previously, but I don't believe they had any</p> <p>9 direct or indirect of Asian Offshore Services</p> <p>10 and SPGK International.</p> <p>11 Q. And what's the basis for that</p> <p>12 belief?</p> <p>13 A. Just -- just from I know the names</p> <p>14 Interush, and I believe that they might --</p> <p>15 just from memory -- they might have been part</p> <p>16 of a bigger group structure that Ascentra had</p> <p>17 prior to -- prior to 2016.</p> <p>18 Q. Are you aware of any facts</p> <p>19 concerning either how, when or why they would</p> <p>20 have ceased to have an ownership interest in</p> <p>21 those two entities at the bottom of the</p> <p>22 left-hand corner?</p> <p>23 MR. McDONALD: Objection to form.</p> <p>24 A. I do have a memory that they --</p> <p>25 that Ted could have -- Ted Sanders, sorry,</p>

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2 could have purchased those companies from  
3 Ascentra.  
4 Q. Do you have any understanding or  
5 memory as to when that may have happened?  
6 A. No. I've got no memory.  
7 Q. In the upper left-hand portion of  
8 the document you've got Mr. Yoshida, is that  
9 right?  
10 A. Yes.  
11 Q. And then below him you've got two  
12 entities, Scuderia Bianco Limited --  
13 A. Yes.  
14 Q. -- and Lequios Holdings? Lequios?  
15 A. Lequios?  
16 Q. I'll go with your --  
17 A. I'm not good at any of those fancy  
18 words.  
19 Q. And then there's also a third  
20 entity called Growth Today Inc.  
21 Do I have that right?  
22 A. Yes. I see them.  
23 Q. Okay. Do you know if Ascentra  
24 Holdings, Inc. or any of its subsidiaries ever  
25 had a direct or indirect ownership interest in

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1 G. ROBINSON  
2 Scuderia Bianco Limited?  
3 MR. McDONALD: Objection to form.  
4 A. No.  
5 Q. Okay. Do you know if Ascentra  
6 Holdings, Inc. or any of its subsidiaries ever  
7 had a direct or indirect ownership interest in  
8 Lequios Holdings?  
9 A. No.  
10 Q. Do you know if Ascentra Holdings,  
11 Inc. or any of its subsidiaries ever had a  
12 direct or indirect ownership interest in  
13 Growth Today Inc.?  
14 MR. McDONALD: Objection to form.  
15 A. Just so I'm clear, what do you mean  
16 by "direct or indirect ownership"?  
17 Q. That they were -- that they held  
18 shares in, that they held equity, that they  
19 were a contributory, either in their own name  
20 or through another entity or person that they  
21 controlled.  
22 MR. McDONALD: I'm going to object  
23 and direct the witness not to answer.  
24 The ownership and interrelationship of  
25 these entities is subject to the

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1 G. ROBINSON  
2 proceeding in the Cayman Islands, and  
3 SPGK has answered that complaint, we  
4 have responded. And to the extent that  
5 there is any interrelationship between  
6 these entities, which we allege there  
7 is, will be dealt with in connection  
8 with those proceedings.  
9 MR. MORRIS: I'm not asking if  
10 there's a relationship between the two.  
11 I'm asking a very narrow question. Let  
12 me just ask -- let me just ask --  
13 MR. McDONALD: Can you just  
14 rephrase that question, please?  
15 MR. MORRIS: Yes, I appreciate  
16 that.  
17 BY MR. MORRIS:  
18 Q. To the best of your knowledge, sir,  
19 has Ascentra Holdings, Inc. or any of its  
20 subsidiaries ever had a direct or indirect  
21 ownership interest in Growth Today Inc.?  
22 A. What do you mean by "ownership  
23 interest"?  
24 DIR Q. That they -- that they were an  
25 owner of that entity. That they held some

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1 G. ROBINSON  
2 portion -- all or some portion of the shares.  
3 A. Shares.  
4 MR. McDONALD: Objection.  
5 I direct the witness not to answer.  
6 MR. MORRIS: What's the basis for  
7 the direction? Just so the record's  
8 clear.  
9 MR. McDONALD: That is a subject to  
10 the litigation in the Cayman Islands,  
11 and as we have stated to the Court, we  
12 are not litigating the Cayman proceeding  
13 here as part of this 30(b)(6).  
14 MR. MORRIS: You've made that  
15 argument. I just want to make my  
16 record.  
17 MR. McDONALD: I just want to be  
18 perfectly clear.  
19 MR. MORRIS: I appreciate that.  
20 MR. McDONALD: The  
21 interrelationship between Growth Today,  
22 its ultimate switch in ownership and the  
23 relationship between its prior principal  
24 and the principals of Ascentra are being  
25 litigated in the Cayman Islands.



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<p style="text-align: right;">Page 53</p> <p>1 G. ROBINSON</p> <p>2 MR. MORRIS: So this is my</p> <p>3 opportunity -- because I want to make my</p> <p>4 record, too -- this is my opportunity to</p> <p>5 inquire as to the facts that relate to</p> <p>6 the likelihood of success on the merits</p> <p>7 in New York. And I appreciate your</p> <p>8 argument, and I know you made it to the</p> <p>9 New York court and here we are.</p> <p>10 So I believe that the answer to</p> <p>11 this question goes to the likelihood of</p> <p>12 success of the merits, which is why I am</p> <p>13 asking it, to be clear.</p> <p>14 And with that, if you are going to</p> <p>15 direct him not to answer, we'll just</p> <p>16 move on.</p> <p>17 MR. McDONALD: I am directing him</p> <p>18 not to answer.</p> <p>19 MR. MORRIS: Okay. I am just going</p> <p>20 to reserve my right, for all of the</p> <p>21 questions that you direct him not to</p> <p>22 answer, to either seek -- because I want</p> <p>23 to be clear -- to seek a preclusion</p> <p>24 order in New York from Ascentra offering</p> <p>25 any evidence that would have been</p>	<p style="text-align: right;">Page 55</p> <p>1 G. ROBINSON</p> <p>2 BY MR. MORRIS:</p> <p>3 DIR Q. Sir, do you know if Ascentra</p> <p>4 Holdings, Inc. or any of its subsidiaries ever</p> <p>5 had a contract with Growth Today Inc. or any</p> <p>6 of its subsidiaries?</p> <p>7 MR. McDONALD: Objection.</p> <p>8 I direct the witness not to answer.</p> <p>9 Q. Are you going to follow your</p> <p>10 counsel's advice?</p> <p>11 A. Yes.</p> <p>12 Q. Do you know if Ascentra Holdings,</p> <p>13 Inc. or any of its subsidiaries ever commenced</p> <p>14 legal proceeding to enforce any agreement that</p> <p>15 it contended it had with Growth Today or any</p> <p>16 of its subsidiaries?</p> <p>17 MR. McDONALD: Objection to form.</p> <p>18 A. Just repeat the question, please?</p> <p>19 Q. Yes, I appreciate that. I could do</p> <p>20 better.</p> <p>21 Prior to the commencement of the</p> <p>22 Ascentra Holdings, Inc. Cayman Islands</p> <p>23 liquidation proceeding, are you aware of any</p> <p>24 enforcement action that Ascentra Holdings,</p> <p>25 Inc. or any of its subsidiaries took against</p>
<p style="text-align: right;">Page 54</p> <p>1 G. ROBINSON</p> <p>2 responsive to these questions in the</p> <p>3 New York proceeding, or to compel</p> <p>4 further deposition.</p> <p>5 So those are the two things that</p> <p>6 I'm reserving my right for, and we'll</p> <p>7 just go forward.</p> <p>8 MR. McDONALD: And the judge made</p> <p>9 it very clear that if you're inquiring</p> <p>10 into the success of the Cayman</p> <p>11 proceeding, that is privileged and that</p> <p>12 goes beyond the scope of this</p> <p>13 deposition. He made that crystal clear</p> <p>14 at the last hearing, and we reserve our</p> <p>15 rights as well.</p> <p>16 MR. MORRIS: Okay. I don't think</p> <p>17 he said anything about privilege.</p> <p>18 MR. McDONALD: He did.</p> <p>19 MR. MORRIS: I don't think he said</p> <p>20 anything about privilege, but okay.</p> <p>21 MR. McDONALD: John, he did. He</p> <p>22 said if the question is basically do you</p> <p>23 think you're going to win Cayman, and</p> <p>24 all of these are going to that, he said</p> <p>25 that's privileged. He was very clear.</p>	<p style="text-align: right;">Page 56</p> <p>1 G. ROBINSON</p> <p>2 Growth Today Inc. or any of its subsidiaries</p> <p>3 with respect to any contract?</p> <p>4 A. No.</p> <p>5 Q. Okay. Thank you.</p> <p>6 Do you know if Ascentra Holdings,</p> <p>7 Inc., as distinguished from the subsidiaries,</p> <p>8 do you know if Ascentra Holdings, Inc. ever</p> <p>9 provided any goods or services to Growth Today</p> <p>10 Inc. or any of Growth Today Inc.'s</p> <p>11 subsidiaries?</p> <p>12 MR. McDONALD: Objection to form.</p> <p>13 A. Just say the question again,</p> <p>14 please?</p> <p>15 Q. Sure. Do you know whether Ascentra</p> <p>16 Holdings, Inc. -- withdrawn.</p> <p>17 Prior to the commencement of the</p> <p>18 Cayman Islands liquidation proceedings do you</p> <p>19 know whether Ascentra Holdings, Inc. ever</p> <p>20 provided goods and services to Growth Today</p> <p>21 Inc. or any of the three subsidiaries listed</p> <p>22 underneath it in this organizational chart?</p> <p>23 A. And you're asking me for</p> <p>24 specifically Ascentra Holdings, Inc., or --</p> <p>25 Q. Correct.</p>

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<p>1 G. ROBINSON</p> <p>2 A. -- or not the Ascentra group?</p> <p>3 Q. Exactly.</p> <p>4 MR. McDONALD: Objection to form.</p> <p>5 A. Then the answer is no.</p> <p>6 DIR Q. Okay. Do you know if Growth Today</p> <p>7 or any of the entities beneath Growth Today</p> <p>8 ever paid money to a third party for the</p> <p>9 benefit of Ascentra Holdings, Inc. or any of</p> <p>10 its subsidiaries?</p> <p>11 MR. McDONALD: Objection.</p> <p>12 I direct the witness not to answer.</p> <p>13 MR. MORRIS: Can I ask him if he</p> <p>14 knows the answer to the question? I'm</p> <p>15 going to ask him the question, and then</p> <p>16 you can decide.</p> <p>17 DIR Q. Without divulging the answer to the</p> <p>18 question, just yes or no, do you know whether</p> <p>19 Growth Today Inc. or any of the three entities</p> <p>20 beneath it ever paid any third party for the</p> <p>21 benefit of Ascentra Holdings, Inc. or any of</p> <p>22 its subsidiaries? Just yes or no.</p> <p>23 MR. McDONALD: I'm still going to</p> <p>24 direct him not to answer.</p> <p>25 MR. MORRIS: You're not even going</p>	<p>1 G. ROBINSON</p> <p>2 (Recess taken.)</p> <p>3 THE VIDEOGRAPHER: This begins</p> <p>4 unit 3. We're on the record at 10:56.</p> <p>5 MR. MORRIS: I am going to mark as</p> <p>6 the next exhibit, which I think is</p> <p>7 number 3, Robinson number 3, a document</p> <p>8 that was previously marked as Hernandez</p> <p>9 exhibit 5. And it's entitled Joint</p> <p>10 Official Liquidators' Certificate.</p> <p>11 (Robinson Exhibit 3, CWR Form</p> <p>12 Number 13, Joint Official Liquidators'</p> <p>13 Certificate was marked for</p> <p>14 identification.)</p> <p>15 BY MR. MORRIS:</p> <p>16 Q. All right, sir. Do you have</p> <p>17 Robinson exhibit 3 in front of you?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Do you know what that is?</p> <p>20 A. Yes.</p> <p>21 Q. And what is this document?</p> <p>22 A. This is the Joint Official</p> <p>23 Liquidators' Certificate of Determination of</p> <p>24 Solvency for Ascentra Holdings, Inc.</p> <p>25 Q. And in this document it says that</p>
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<p>1 G. ROBINSON</p> <p>2 to let me know if he knows the answer to</p> <p>3 the question?</p> <p>4 MR. McDONALD: Yes.</p> <p>5 MR. MORRIS: Okay.</p> <p>6 Q. Are you going to follow counsel's</p> <p>7 advice?</p> <p>8 A. Yes.</p> <p>9 MR. McDONALD: John, when you come</p> <p>10 to an appropriate point, can we take a</p> <p>11 break?</p> <p>12 MR. MORRIS: Yes. Now would be</p> <p>13 great.</p> <p>14 MR. McDONALD: Is that okay?</p> <p>15 MR. MORRIS: Yes. So we agree he's</p> <p>16 under oath.</p> <p>17 MR. McDONALD: Yes.</p> <p>18 MR. MORRIS: No communication with</p> <p>19 the witness while the deposition</p> <p>20 continues. But I'm happy to take a</p> <p>21 break.</p> <p>22 MR. McDONALD: Thank you.</p> <p>23 MR. MORRIS: You bet.</p> <p>24 THE VIDEOGRAPHER: This ends</p> <p>25 unit 2. We're off the record at 10:44.</p>	<p>1 G. ROBINSON</p> <p>2 the joint official liquidators, quote, "hereby</p> <p>3 certify that they have determined that the</p> <p>4 above-named company should be treated as</p> <p>5 solvent."</p> <p>6 Did I read that correctly?</p> <p>7 A. Yes.</p> <p>8 Q. How did you make that</p> <p>9 determination?</p> <p>10 A. So when we -- when we are appointed</p> <p>11 official liquidators, one of our duties is to</p> <p>12 just analyze the books and records that we</p> <p>13 have in our possession. I spoke to</p> <p>14 stakeholders, management, former officers of</p> <p>15 the company. Reviewed financial information</p> <p>16 in our possession. And we make a</p> <p>17 determination on whether the -- the company is</p> <p>18 solvent. And that's also discussed in</p> <p>19 consultation with our attorneys.</p> <p>20 And then we make a decision that we</p> <p>21 should -- whether we should -- what</p> <p>22 determination we should file.</p> <p>23 And after that initial review, in</p> <p>24 consultation, the decision was taken to file a</p> <p>25 certificate of solvency.</p>

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<p>1 G. ROBINSON</p> <p>2 Q. You used the phrase "stakeholders."</p> <p>3 Do you recall which stakeholders</p> <p>4 you communicated with with respect to the</p> <p>5 decision to identify Ascentra Holdings,</p> <p>6 Inc. as solvent?</p> <p>7 MR. McDONALD: Objection to form.</p> <p>8 I think there's confusion. I think</p> <p>9 you're saying -- did you "stakeholders"</p> <p>10 or "stockholders"?</p> <p>11 MR. MORRIS: I heard him say</p> <p>12 "stakeholders."</p> <p>13 MR. McDONALD: Okay.</p> <p>14 MR. MORRIS: Let me try again.</p> <p>15 MR. McDONALD: It just came across</p> <p>16 as stockholders or stakeholders. I</p> <p>17 wasn't sure which you were going with.</p> <p>18 MR. MORRIS: I'll try again.</p> <p>19 Q. Did you speak with any stakeholders</p> <p>20 in connection with your determination to</p> <p>21 declare Ascentra Holdings, Inc. to be solvent?</p> <p>22 MR. McDONALD: Objection to the</p> <p>23 form.</p> <p>24 A. When I say the word "stakeholder,"</p> <p>25 I am talking about numerous parties involved</p>	<p>1 G. ROBINSON</p> <p>2 A. No.</p> <p>3 Q. You mentioned "books and records."</p> <p>4 Do you recall, and I appreciate</p> <p>5 it's been some time, do you recall what books</p> <p>6 and records you reviewed and relied upon to</p> <p>7 reach your determination that Ascentra</p> <p>8 Holdings, Inc. is solvent?</p> <p>9 A. It would have been through</p> <p>10 communication and discussions with the</p> <p>11 stakeholders and with the financial</p> <p>12 information that we were provided to --</p> <p>13 provided with by Whinney.</p> <p>14 Q. Among that information, was there a</p> <p>15 general ledger, if you recall?</p> <p>16 A. We were aware of the -- the assets</p> <p>17 of the group and what pertained to the assets</p> <p>18 of the Ascentra group.</p> <p>19 Q. Did the determination of solvency</p> <p>20 take into account not just assets but</p> <p>21 liabilities?</p> <p>22 A. Yes.</p> <p>23 Q. Is there a particular test that you</p> <p>24 utilized to determine that Ascentra Holdings,</p> <p>25 Inc. is solvent?</p>
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<p>1 G. ROBINSON</p> <p>2 in the affairs of the company.</p> <p>3 Q. Okay. Can you identify those</p> <p>4 parties who were involved in the affairs of</p> <p>5 the company?</p> <p>6 A. That I spoke to?</p> <p>7 Q. Yes.</p> <p>8 A. On the process, okay. Yes.</p> <p>9 That would be employees of the</p> <p>10 group. It would have been Ted Sanders. It</p> <p>11 was also, I believe, from memory, that I also</p> <p>12 had communications with Luke Ryu. Marty</p> <p>13 Matthews. And that would be it.</p> <p>14 Did I say staff?</p> <p>15 Q. You said employees.</p> <p>16 A. Employees, okay. Yes.</p> <p>17 Q. Do you remember the names of any of</p> <p>18 the employees?</p> <p>19 A. Communication on that would have</p> <p>20 been with Whinney.</p> <p>21 Q. Okay. Out of the people that you</p> <p>22 just identified, did any of them disagree with</p> <p>23 the determination that you ultimately made</p> <p>24 that Ascentra Holdings, Inc. is solvent?</p> <p>25 MR. McDONALD: Objection to form.</p>	<p>1 G. ROBINSON</p> <p>2 MR. McDONALD: Objection to form.</p> <p>3 A. There is no -- there is no specific</p> <p>4 test that official liquidators undertake when</p> <p>5 he's determining solvency. It's the joint</p> <p>6 official liquidators' opinion.</p> <p>7 Q. Do you know whether Ascentra</p> <p>8 Holdings, Inc. maintained financial statements</p> <p>9 for itself and its subsidiaries?</p> <p>10 A. Yes. There are -- there are. Yep.</p> <p>11 Q. And would those financial</p> <p>12 statements include balance sheets?</p> <p>13 MR. McDONALD: Object to the form.</p> <p>14 A. Yes.</p> <p>15 Q. What other financial statements are</p> <p>16 you -- do you have in mind when you think back</p> <p>17 to what you reviewed in connection with this</p> <p>18 analysis?</p> <p>19 A. Yeah, okay.</p> <p>20 MR. McDONALD: Let him finish the</p> <p>21 question.</p> <p>22 A. Say the question again? Sorry.</p> <p>23 Q. Okay. Did you review financial</p> <p>24 statements in connection with your analysis of</p> <p>25 solvency?</p>

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<p style="text-align: right;">Page 65</p> <p>1 G. ROBINSON</p> <p>2 A. So when we got -- when we appointed</p> <p>3 and we were reviewing the books and records in</p> <p>4 our possession -- so when you say "financial</p> <p>5 statements," there were no audited statements</p> <p>6 for the recent period leading up to the</p> <p>7 liquidation. There were management accounts</p> <p>8 and financial summaries and bank statements</p> <p>9 and Excel spreadsheets showing balances at</p> <p>10 bank and assets and stuff that is very basic.</p> <p>11 It wasn't complicated. It was easy to look</p> <p>12 at, easy to assess. And we deemed, after</p> <p>13 reviewing those kind of financials, that the</p> <p>14 company -- that Ascentra should be deemed</p> <p>15 solvent.</p> <p>16 Q. Thank you very much.</p> <p>17 Do you recall whether Ascentra</p> <p>18 Holdings, Inc. reported their financial</p> <p>19 statements on a consolidated basis with their</p> <p>20 subsidiaries?</p> <p>21 MR. McDONALD: Objection to form.</p> <p>22 A. We have seen draft financial</p> <p>23 statements and previous signed financial</p> <p>24 statements where the accounts are</p> <p>25 consolidated, yes.</p>	<p style="text-align: right;">Page 67</p> <p>1 G. ROBINSON</p> <p>2 Q. Okay. In your review of the</p> <p>3 records did you see anything that would have</p> <p>4 reflected any disagreement between Ascentra</p> <p>5 Holdings, Inc. and the last outside auditor</p> <p>6 that it did have?</p> <p>7 MR. McDONALD: Objection to form.</p> <p>8 A. I can't from memory remember if</p> <p>9 there was any statements in the last signed</p> <p>10 audited statements from the auditor</p> <p>11 questioning anything, how the accounts were --</p> <p>12 were shown.</p> <p>13 Q. Okay. And I think you testified</p> <p>14 that your recollection is the last audited</p> <p>15 financial statements were for either 2018 or</p> <p>16 2019.</p> <p>17 Do I have that right?</p> <p>18 MR. McDONALD: Objection.</p> <p>19 Q. Or was it '17 and '18?</p> <p>20 A. You're talking about --</p> <p>21 Q. Audited.</p> <p>22 A. -- today?</p> <p>23 Q. Mm-hmm.</p> <p>24 A. Yeah, probably seven -- maybe 2017.</p> <p>25 Q. Are you aware of any reason why</p>
<p style="text-align: right;">Page 66</p> <p>1 G. ROBINSON</p> <p>2 Q. Do you know the last period for</p> <p>3 which Ascentra Holdings, Inc. received audited</p> <p>4 financial statements?</p> <p>5 A. I'm not a hundred percent, but I</p> <p>6 think it could be either 2017 maybe or 2018.</p> <p>7 But that's from memory. Sorry.</p> <p>8 Q. Do you recall if Ascentra Holdings,</p> <p>9 Inc. prepared its financial statements on a</p> <p>10 calendar-year basis, or was there some other</p> <p>11 time period that they utilized? Or</p> <p>12 year-basis, fiscal year?</p> <p>13 A. Again, from memory I think the</p> <p>14 financial year-end was December, but I</p> <p>15 don't -- I don't fully recall. I'm sorry.</p> <p>16 Q. Do you remember the name of</p> <p>17 Ascentra's outside auditors for the period of</p> <p>18 time that audited financial statements were</p> <p>19 completed?</p> <p>20 A. I don't recall the name, no.</p> <p>21 Q. In your capacity as Ascentra's</p> <p>22 joint official liquidator did you ever speak</p> <p>23 with Ascentra's outside auditors?</p> <p>24 A. There were no outside auditors</p> <p>25 appointed at the time of my appointment.</p>	<p style="text-align: right;">Page 68</p> <p>1 G. ROBINSON</p> <p>2 audited financial statements were not</p> <p>3 completed for any period after the last one?</p> <p>4 A. I would say from the financials it</p> <p>5 would be how -- how the account should be</p> <p>6 recorded, and all the parties involved, how</p> <p>7 they wanted the account to be shown.</p> <p>8 Q. Okay. I think you said you are an</p> <p>9 accountant, is that right?</p> <p>10 A. I have accountant qualifications.</p> <p>11 Q. Do you know whether Ascentra's</p> <p>12 books and records were maintained under GAAP</p> <p>13 accounting or, I guess, IFRS?</p> <p>14 A. I do not know.</p> <p>15 Q. You don't know.</p> <p>16 MR. McDONALD: John, just to be</p> <p>17 clear, when you say "Ascentra" you mean</p> <p>18 Ascentra Holdings or Ascentra group?</p> <p>19 MR. MORRIS: I appreciate that.</p> <p>20 Ascentra Holdings, Inc. Yes.</p> <p>21 MR. McDONALD: Okay.</p> <p>22 Q. And the same question then for any</p> <p>23 of the subsidiaries.</p> <p>24 Do you know if --</p> <p>25 MR. McDONALD: Ascentra group. You</p>



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<p style="text-align: right;">Page 69</p> <p>1 G. ROBINSON</p> <p>2 distinguished between Ascentra and</p> <p>3 Ascentra Holdings. So just to be</p> <p>4 precise.</p> <p>5 MR. MORRIS: Okay.</p> <p>6 Q. You have never withdrawn the</p> <p>7 certificate that's been marked as Robinson</p> <p>8 exhibit 3, correct?</p> <p>9 A. Correct.</p> <p>10 Q. Okay. As an experienced and</p> <p>11 licensed insolvency practitioner, can you</p> <p>12 share with me your understanding of the</p> <p>13 circumstances that would require you to either</p> <p>14 withdraw or amend this certificate?</p> <p>15 MR. McDONALD: To the extent you</p> <p>16 can answer that without divulging</p> <p>17 attorney-client privilege, please</p> <p>18 answer.</p> <p>19 A. Just say the question again?</p> <p>20 Sorry.</p> <p>21 Q. Just as a Cayman Islands insolvency</p> <p>22 practitioner can you tell me your</p> <p>23 understanding of the circumstances that would</p> <p>24 require you to withdraw, amend or modify the</p> <p>25 certificate?</p>	<p style="text-align: right;">Page 71</p> <p>1 G. ROBINSON</p> <p>2 identification.)</p> <p>3 Q. Mr. Robinson, do you see this is a</p> <p>4 declaration that was submitted to the Court in</p> <p>5 New York back in October 2021?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. And do you recall this</p> <p>8 particular declaration?</p> <p>9 A. Yes.</p> <p>10 Q. And do you recall reviewing it</p> <p>11 before it was filed with the court?</p> <p>12 A. Yes.</p> <p>13 Q. And did you have an opportunity to</p> <p>14 make comments and changes to the declaration?</p> <p>15 A. I did, yes.</p> <p>16 Q. Okay. Let's go to paragraph 18.</p> <p>17 And if you could just read that to yourself</p> <p>18 for the moment.</p> <p>19 (The witness complied.)</p> <p>20 A. Okay.</p> <p>21 Q. Was it your understanding at the</p> <p>22 time you signed this that that statement was</p> <p>23 true and accurate?</p> <p>24 A. Yes.</p> <p>25 Q. Do you believe it's true and</p>
<p style="text-align: right;">Page 70</p> <p>1 G. ROBINSON</p> <p>2 A. This is a general question, not</p> <p>3 related to Ascentra?</p> <p>4 Q. Correct.</p> <p>5 A. That would be, as an officer of the</p> <p>6 court and you've got a duty to monitor the</p> <p>7 solvency during a lifecycle of the</p> <p>8 liquidation, you would look and check</p> <p>9 constantly on asset values and liability</p> <p>10 values. And if those change.</p> <p>11 Q. So is it fair to say that they</p> <p>12 haven't changed in a manner in which it caused</p> <p>13 you to withdraw the solvency certificate?</p> <p>14 MR. McDONALD: Objection to form.</p> <p>15 A. Since I filed this in September</p> <p>16 2021 there's nothing that's come into my</p> <p>17 possession or been filed by the parties that</p> <p>18 has made me determine my solvency</p> <p>19 determination should change.</p> <p>20 Q. Okay, thank you.</p> <p>21 MR. MORRIS: We'll mark as the next</p> <p>22 exhibit, it will be Robinson number 4.</p> <p>23 It's one of your earlier declarations.</p> <p>24 (Robinson Exhibit 4, Declaration of</p> <p>25 Graham Robinson was marked for</p>	<p style="text-align: right;">Page 72</p> <p>1 G. ROBINSON</p> <p>2 accurate today?</p> <p>3 A. Yes.</p> <p>4 Q. Just one little wrinkle here.</p> <p>5 It's a statement that's made as of</p> <p>6 December 31, 2021, but the document is</p> <p>7 prepared in October 2021.</p> <p>8 Is this kind of a forward-looking</p> <p>9 statement?</p> <p>10 A. Yeah, I would say that we probably</p> <p>11 forecast what expenses were likely to incur up</p> <p>12 to the end of the year, yes.</p> <p>13 Q. Was it also true as of the date you</p> <p>14 filed the application in the Cayman Islands</p> <p>15 court for supervision of the liquidation; was</p> <p>16 this statement true at that time as well?</p> <p>17 MR. McDONALD: Objection to form.</p> <p>18 MR. MORRIS: Withdrawn.</p> <p>19 Q. The liquidation was commenced</p> <p>20 officially in --</p> <p>21 A. 17th of September.</p> <p>22 Q. September 17th.</p> <p>23 If we changed "December 31, 2021"</p> <p>24 to September 17, 2021, would the statement in</p> <p>25 paragraph 18 be accurate?</p>

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<p style="text-align: right;">Page 73</p> <p>1 G. ROBINSON</p> <p>2 A. Accurate in what way?</p> <p>3 Q. Would there be any modification to</p> <p>4 this statement if you just took it and turned</p> <p>5 it back, you know, ten weeks, to the date of</p> <p>6 commencement?</p> <p>7 A. So -- okay. So you're saying</p> <p>8 Ascentra's main liabilities as of 17th of</p> <p>9 September, 2021, basically?</p> <p>10 Q. Correct. Mm-hmm.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And when you use the term</p> <p>13 "main liabilities" there, are you aware of</p> <p>14 any liabilities that Ascentra had as of</p> <p>15 September 17, 2021 other than the costs that</p> <p>16 were going to be incurred by the liquidators</p> <p>17 and certain ordinary course operating</p> <p>18 expenses? Were there any other liabilities</p> <p>19 that you can recall?</p> <p>20 A. At the time, are you talking about</p> <p>21 17th of September, or are you talking about</p> <p>22 the day of this declaration?</p> <p>23 Q. September 17.</p> <p>24 A. Okay. So just state the question</p> <p>25 again, please?</p>	<p style="text-align: right;">Page 75</p> <p>1 G. ROBINSON</p> <p>2 A. That's a difficult question to</p> <p>3 answer because what I think you're asking me</p> <p>4 is did other creditors come about after the</p> <p>5 31st of December 2021 that weren't potentially</p> <p>6 contingent at that time or I was totally</p> <p>7 unaware of at that time.</p> <p>8 I can't recall. Because as part of</p> <p>9 the liquidation process, I've been dealing</p> <p>10 with creditor -- previous creditors and</p> <p>11 potential creditors through the whole</p> <p>12 liquidation process.</p> <p>13 Q. Go back to exhibit 1, which was the</p> <p>14 30(b)(6) notice. And if you can turn I think</p> <p>15 to the third page, at the bottom it says</p> <p>16 "Amended Topics."</p> <p>17 A. Okay.</p> <p>18 Q. And 2(a) asks about the number of</p> <p>19 creditors existing as of the date of</p> <p>20 commencement.</p> <p>21 Let me just modify that a tiny bit,</p> <p>22 in light of what you just said.</p> <p>23 Do you recall whether Ascentra had</p> <p>24 any non -- any creditors who held</p> <p>25 non-contingent claims, right, who you agree</p>
<p style="text-align: right;">Page 74</p> <p>1 G. ROBINSON</p> <p>2 Q. Sure. When you use the phrase</p> <p>3 "main liabilities" -- actually, let's do this</p> <p>4 in pieces.</p> <p>5 Are you aware of any other -- any</p> <p>6 liabilities as of December 31, 2021 other than</p> <p>7 the costs incurred by the liquidators and</p> <p>8 certain ordinary course operating expenses for</p> <p>9 storage and maintenance of Ascentra's</p> <p>10 information?</p> <p>11 A. I think the key sentence there</p> <p>12 would be "Ascentra may have other contingent</p> <p>13 liabilities that my team and are I</p> <p>14 investigating."</p> <p>15 Q. Okay. I appreciate that and I want</p> <p>16 to separate, you know, stuff that may be</p> <p>17 subject to investigation from what you knew,</p> <p>18 what was -- you know, what was on the books</p> <p>19 and records, what you knew at the time. Okay?</p> <p>20 So with that distinction, were</p> <p>21 there any liabilities that you're aware of</p> <p>22 that existed as of the end of 2021 other than</p> <p>23 the ones that are described here?</p> <p>24 Any non-contingent liabilities.</p> <p>25 How about that?</p>	<p style="text-align: right;">Page 76</p> <p>1 G. ROBINSON</p> <p>2 they had a claim, as of the date of</p> <p>3 commencement? Did they have any such</p> <p>4 creditors?</p> <p>5 MR. McDONALD: Objection to form.</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Do you recall how many</p> <p>8 creditors they had that fell into that very</p> <p>9 specific category of non-contingent claims?</p> <p>10 MR. McDONALD: Objection to form.</p> <p>11 A. I struggle for the exact number,</p> <p>12 but you are looking, I would say, at ten, 12.</p> <p>13 Ten to 12, maybe.</p> <p>14 Q. Okay. So to the best of your</p> <p>15 recollection, on the date of commencement</p> <p>16 Ascentra Holdings, Inc. had approximately ten</p> <p>17 to 12 creditors who held undisputed claims, is</p> <p>18 that fair?</p> <p>19 A. Exactly the day of appointment you</p> <p>20 don't know if they're going to be -- if they</p> <p>21 may be still disputed until you've reviewed.</p> <p>22 So ...</p> <p>23 Q. So when you referred to the ten or</p> <p>24 12, were those ten or 12 disputed claims,</p> <p>25 undisputed claims or a mix?</p>

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<p>1 G. ROBINSON</p> <p>2 A. We were provided with that list</p> <p>3 when we got appointed, and then we reviewed</p> <p>4 and analyzed it, and if they were not</p> <p>5 disputed, they would have been paid.</p> <p>6 Q. Okay. And as a total group, how</p> <p>7 many disputed, undisputed or contingent claims</p> <p>8 existed, to the best of your knowledge, on the</p> <p>9 date of commencement?</p> <p>10 MR. McDONALD: Objection to form.</p> <p>11 A. Again, you don't know which ones</p> <p>12 are disputed when you get appointed.</p> <p>13 Q. And that's why I am trying to say I</p> <p>14 don't really care whether it's disputed or</p> <p>15 undisputed or contingent.</p> <p>16 How many claims existed, to the</p> <p>17 best of your knowledge, on the commencement</p> <p>18 date, irrespective of whether they were</p> <p>19 contingent or disputed claims?</p> <p>20 A. So on top of the ten to 12 is --</p> <p>21 Q. Mm-hmm.</p> <p>22 A. I would say maybe another ten.</p> <p>23 Q. Okay. So somewhere between 20 and</p> <p>24 22 claims in total, which included undisputed</p> <p>25 claims, disputed claims and contingent claims.</p>	<p>1 G. ROBINSON</p> <p>2 MR. MORRIS: Withdrawn.</p> <p>3 Q. What was the biggest claim?</p> <p>4 MR. McDONALD: Objection to form.</p> <p>5 A. If you exclude the monies that are</p> <p>6 due to the members on the commissions, the</p> <p>7 biggest creditor claim was -- for a service</p> <p>8 provider was approximately 3.9 million.</p> <p>9 Q. Do you know whether under the</p> <p>10 Cayman Companies Act a solvent entity</p> <p>11 liquidating under court supervision is</p> <p>12 required to pay creditors within 12 months?</p> <p>13 MR. McDONALD: Objection to form.</p> <p>14 A. Sorry, say again.</p> <p>15 Q. Do you know whether under the</p> <p>16 Cayman Companies Act a solvent entity</p> <p>17 operating under court supervision is required</p> <p>18 to pay its debts within 12 months?</p> <p>19 MR. McDONALD: Objection to form.</p> <p>20 Q. You can answer.</p> <p>21 A. Under court supervision, no.</p> <p>22 Q. Is that a rule that applies outside</p> <p>23 of court?</p> <p>24 MR. McDONALD: Objection to form.</p> <p>25 A. For a voluntary liquidation --</p>
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<p>1 G. ROBINSON</p> <p>2 Is that fair?</p> <p>3 MR. McDONALD: Objection to form.</p> <p>4 A. I would say okay, yes.</p> <p>5 Q. Do you know the aggregate value of</p> <p>6 those claims?</p> <p>7 MR. McDONALD: Objection to form.</p> <p>8 A. Which -- do you want to break it</p> <p>9 down?</p> <p>10 Q. Sure.</p> <p>11 A. Are you asking for the full amount?</p> <p>12 Q. Let's start with the full amount.</p> <p>13 MR. MORRIS: Withdrawn. Let me ask</p> <p>14 a different question.</p> <p>15 Q. As of the commencement date, what</p> <p>16 did Ascentra's books and records show as their</p> <p>17 obligations owing to creditors?</p> <p>18 MR. McDONALD: Objection to form.</p> <p>19 A. I think from memory it was over</p> <p>20 20 million U.S. dollars. That is for</p> <p>21 creditors and other potential creditors.</p> <p>22 Q. Right. And was there any creditor,</p> <p>23 to the best of your recollection, who held a</p> <p>24 claim, whether it was disputed or not, that</p> <p>25 was more than a million dollars?</p>	<p>1 G. ROBINSON</p> <p>2 well, a director, if he signs a declaration of</p> <p>3 solvency, he's swearing in the declaration</p> <p>4 that all the debts of the company will be paid</p> <p>5 off in full within 12 months.</p> <p>6 Q. That's what I am asking.</p> <p>7 Did that happen in this case?</p> <p>8 A. No.</p> <p>9 Q. So which debts were not paid in</p> <p>10 full within 12 months?</p> <p>11 MR. McDONALD: Objection to form.</p> <p>12 A. Within 12 -- in the first 12</p> <p>13 months?</p> <p>14 Q. Mm-hmm.</p> <p>15 A. I don't know from memory. As I</p> <p>16 said, there's no requirement for debts to be</p> <p>17 paid, all creditors to be paid in 12 months.</p> <p>18 Like I said before, and I'll repeat</p> <p>19 again, we've been dealing with creditors for</p> <p>20 the full -- through the whole liquidation</p> <p>21 process, and some have been paid, some have</p> <p>22 been agreed and paid, and we have probably</p> <p>23 some creditors that we have not verified and</p> <p>24 paid.</p> <p>25 Q. Has Ascentra paid all creditors in</p>

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<p style="text-align: right;">Page 81</p> <p>1 G. ROBINSON</p> <p>2 full who hold undisputed claims?</p> <p>3 MR. McDONALD: Objection to form.</p> <p>4 A. Yes.</p> <p>5 Q. And is the only reason the</p> <p>6 remaining creditors haven't been paid in full</p> <p>7 is because there's a dispute as to either the</p> <p>8 validity or the amount of their claim?</p> <p>9 MR. McDONALD: Objection to form.</p> <p>10 A. Yes, the verification -- I would</p> <p>11 say that the verification -- sorry. The</p> <p>12 verification of the process of agreeing the</p> <p>13 claims is still ongoing.</p> <p>14 Q. How many claims are subject to</p> <p>15 dispute today?</p> <p>16 A. Seven.</p> <p>17 Q. Are those seven claims held by</p> <p>18 seven different people and entities, or does</p> <p>19 one or more entity own one or more of those</p> <p>20 disputed claims?</p> <p>21 MR. McDONALD: John, just to</p> <p>22 interject. There are reports filed with</p> <p>23 the Cayman court, and we're kind of</p> <p>24 cutting close to a line here.</p> <p>25 To the extent generally you can</p>	<p style="text-align: right;">Page 83</p> <p>1 G. ROBINSON</p> <p>2 read back.)</p> <p>3 A. Seven separate entities.</p> <p>4 Q. Okay. So is it fair to say that</p> <p>5 Ascentra Holdings, Inc. has paid all creditors</p> <p>6 in full except for the seven entities who hold</p> <p>7 one disputed claim each?</p> <p>8 MR. McDONALD: Objection to form.</p> <p>9 A. Yes.</p> <p>10 DIR Q. Does the Ascentra Holdings estate</p> <p>11 have sufficient assets to pay those disputed</p> <p>12 claims in full if the holders of those claims</p> <p>13 prevail on their position that their claims</p> <p>14 are valid?</p> <p>15 MR. McDONALD: We're getting into</p> <p>16 the -- that line, and I'm going to</p> <p>17 object and direct the witness not to</p> <p>18 answer.</p> <p>19 MR. MORRIS: I just want to be</p> <p>20 really clear. I'm just asking for a</p> <p>21 yes-or-no answer here.</p> <p>22 DIR Q. Does the state -- does the estate</p> <p>23 have the sufficient assets to satisfy those</p> <p>24 contingent claims if they are ultimately</p> <p>25 deemed to be valid in the amounts that the</p>
<p style="text-align: right;">Page 82</p> <p>1 G. ROBINSON</p> <p>2 answer.</p> <p>3 But the court has sealed these</p> <p>4 reports, and they remain subject to</p> <p>5 court seal. So I'm just trying to keep</p> <p>6 that in mind here so that the witness</p> <p>7 isn't divulging information that is</p> <p>8 currently subject to a court order under</p> <p>9 seal.</p> <p>10 MR. MORRIS: Okay. I appreciate</p> <p>11 that --</p> <p>12 MR. McDONALD: In generality, yes.</p> <p>13 MR. MORRIS: I have no knowledge of</p> <p>14 any of that. And you'll instruct him</p> <p>15 not to answer if you think it's your</p> <p>16 responsibility to do that.</p> <p>17 MR. McDONALD: Right. I just</p> <p>18 wanted to make you aware of that, and</p> <p>19 that may be an objection or a direction</p> <p>20 at some point.</p> <p>21 MR. MORRIS: Okay.</p> <p>22 MR. McDONALD: Okay?</p> <p>23 MR. MORRIS: Can we have the</p> <p>24 question read back, please?</p> <p>25 (Requested portion of the record</p>	<p style="text-align: right;">Page 84</p> <p>1 G. ROBINSON</p> <p>2 claim-holders contend?</p> <p>3 MR. McDONALD: Again I'm going to</p> <p>4 object and direct the witness not to</p> <p>5 answer.</p> <p>6 Q. Are you going to follow counsel's</p> <p>7 advice?</p> <p>8 A. Yes.</p> <p>9 Q. Okay.</p> <p>10 MR. McDONALD: And, again, the</p> <p>11 basis of that is that it's requesting</p> <p>12 information that is currently under seal</p> <p>13 with the Cayman court by court order.</p> <p>14 REQ MR. MORRIS: I would request a copy</p> <p>15 of that court order in due course.</p> <p>16 BY MR. MORRIS:</p> <p>17 DIR Q. Can you tell me the aggregate value</p> <p>18 of the claims that are being asserted against</p> <p>19 the Ascentra Holdings, Inc. entity by the</p> <p>20 seven claim-holders?</p> <p>21 MR. McDONALD: Again I am going to</p> <p>22 object and direct the witness not to</p> <p>23 answer.</p> <p>24 MR. MORRIS: And is that also</p> <p>25 because there's a court order that would</p>



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<p style="text-align: right;">Page 85</p> <p>1 G. ROBINSON</p> <p>2 preclude him from answering?</p> <p>3 MR. McDONALD: There's a court</p> <p>4 order that has sealed that information</p> <p>5 that is contained in a report, yes. It</p> <p>6 would be requiring him to divulge</p> <p>7 information that is currently under</p> <p>8 seal. And we will happily send you that</p> <p>9 order.</p> <p>10 MR. MORRIS: Okay.</p> <p>11 BY MR. MORRIS:</p> <p>12 DIR Q. Can you identify for me the holders</p> <p>13 of the seven disputed claims?</p> <p>14 MR. McDONALD: Objection.</p> <p>15 I direct the witness not to answer.</p> <p>16 Q. Are you going to follow counsel's</p> <p>17 advice?</p> <p>18 A. Yes.</p> <p>19 Q. Can you tell me the value of any of</p> <p>20 the disputed claims?</p> <p>21 MR. McDONALD: I think that's been</p> <p>22 answered already.</p> <p>23 MR. MORRIS: If you are objecting</p> <p>24 as asked and answered, that's fine. I</p> <p>25 don't believe it was. So I'll ask for</p>	<p style="text-align: right;">Page 87</p> <p>1 G. ROBINSON</p> <p>2 reports, and that court report is sealed.</p> <p>3 Q. So I want to be really clear what I</p> <p>4 am asking here.</p> <p>5 Do you understand what a reserve</p> <p>6 is?</p> <p>7 A. In what way?</p> <p>8 Q. Has Ascentra Holdings, Inc. set</p> <p>9 money aside for the specific purpose of</p> <p>10 satisfying these disputed claims at some point</p> <p>11 in the future? Just yes or no.</p> <p>12 A. I'm going to refer you to my last</p> <p>13 answer.</p> <p>14 Q. Are you going to refuse to answer</p> <p>15 that question?</p> <p>16 A. I can't answer that question</p> <p>17 because it's based in the reports and those</p> <p>18 reports are sealed.</p> <p>19 So I'm not refusing to answer the</p> <p>20 question.</p> <p>21 Q. You believe you have an obligation</p> <p>22 not to disclose whether or not a reserve has</p> <p>23 been established.</p> <p>24 Do I understand that correctly?</p> <p>25 A. I'm an officer of the court in the</p>
<p style="text-align: right;">Page 86</p> <p>1 G. ROBINSON</p> <p>2 an answer.</p> <p>3 A. I believe I've answered that</p> <p>4 question.</p> <p>5 Q. Okay. Can you tell me again?</p> <p>6 A. 3.9 million.</p> <p>7 Q. Oh, I -- so that's the answer to</p> <p>8 the question of the largest claim, right?</p> <p>9 That's what I understood.</p> <p>10 A. Yeah.</p> <p>11 Q. Okay. Is that a disputed claim or</p> <p>12 an undisputed claim?</p> <p>13 A. Again, we discussed this and</p> <p>14 answered it was a disputed claim.</p> <p>15 Q. So that has not been paid, is that</p> <p>16 fair?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. Has Ascentra Holdings, Inc.</p> <p>19 made any reserve on account of these claims?</p> <p>20 MR. McDONALD: Objection to the</p> <p>21 form.</p> <p>22 A. I'm uncertain if I can answer that</p> <p>23 because that refers to the ongoing incoming</p> <p>24 receipts and payments of the liquidation of</p> <p>25 the estate, and that's within the court</p>	<p style="text-align: right;">Page 88</p> <p>1 G. ROBINSON</p> <p>2 Cayman Islands. My report's been filed with</p> <p>3 the court, and the court has sealed it. I'm</p> <p>4 an officer of the court. I follow what the</p> <p>5 court has done.</p> <p>6 Q. Okay. I just wanted to make sure.</p> <p>7 Certain persons and entities have</p> <p>8 made claims in the liquidation by way of proof</p> <p>9 of debt, is that right?</p> <p>10 MR. McDONALD: Objection to form.</p> <p>11 A. Yes.</p> <p>12 Q. How many proofs of debt have been</p> <p>13 filed?</p> <p>14 MR. McDONALD: Objection to form.</p> <p>15 A. Eight, I believe.</p> <p>16 MR. MORRIS: I'll mark as the next</p> <p>17 exhibit, exhibit 5, Robinson 5, the</p> <p>18 report that was filed with the</p> <p>19 bankruptcy court in New York.</p> <p>20 (Robinson Exhibit 5, letter to the</p> <p>21 Court, dated December 29, 2023 was</p> <p>22 marked for identification.)</p> <p>23 BY MR. MORRIS:</p> <p>24 Q. You could take a quick look at it,</p> <p>25 or take as long as you need to look at it. My</p>

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<p style="text-align: right;">Page 89</p> <p>1 G. ROBINSON</p> <p>2 first question for you is whether you have</p> <p>3 seen this before?</p> <p>4 A. Yes, I've seen this document</p> <p>5 before.</p> <p>6 Q. Okay. And did you see it before it</p> <p>7 was filed?</p> <p>8 A. Yes.</p> <p>9 Q. And so you were aware that it was</p> <p>10 being filed on behalf of the joint official</p> <p>11 liquidators in the Ascentra Chapter 15 case,</p> <p>12 right?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. If you could go to I guess</p> <p>15 the last substantive page, page 4.</p> <p>16 A. Okay.</p> <p>17 Q. So directing your recollection to</p> <p>18 the middle of the page, underneath the heading</p> <p>19 "Additional Actions Undertaken By the</p> <p>20 Liquidators," your counsel informed the court</p> <p>21 in New York, quote, "The liquidators continue</p> <p>22 to correspond with potential creditors and</p> <p>23 parties who have made claims in the</p> <p>24 liquidation by proof of debt."</p> <p>25 Have I read that first sentence</p>	<p style="text-align: right;">Page 91</p> <p>1 G. ROBINSON</p> <p>2 MR. McDONALD: Objection to form.</p> <p>3 A. The proof of debt that was approved</p> <p>4 by the liquidator has been paid, yes.</p> <p>5 Q. In full. So again --</p> <p>6 MR. McDONALD: Objection to form.</p> <p>7 Q. So again, the only thing that is</p> <p>8 outstanding today are the seven disputed</p> <p>9 claims, is that fair?</p> <p>10 MR. McDONALD: Objection to form.</p> <p>11 A. In the Ascentra liquidation?</p> <p>12 Q. Yes, sir.</p> <p>13 A. Those seven, yes, and the members'</p> <p>14 commissions that remain payable, yes.</p> <p>15 Q. Are the members' commissions</p> <p>16 obligations of the company or are they part of</p> <p>17 the members' equity?</p> <p>18 MR. McDONALD: Objection to form.</p> <p>19 A. (No response.)</p> <p>20 MR. MORRIS: Withdrawn.</p> <p>21 Q. When you use the phrase "members'</p> <p>22 commission," what are you referring to?</p> <p>23 A. This -- this is the commissions</p> <p>24 that are due to the -- to the members that</p> <p>25 sold products on behalf of the Ascentra group.</p>
<p style="text-align: right;">Page 90</p> <p>1 G. ROBINSON</p> <p>2 correctly?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. The phrase "potential</p> <p>5 creditors," are those creditors who hold</p> <p>6 contingent or disputed claims?</p> <p>7 A. The two referred to here are the</p> <p>8 seven I listed before, yes. Part of the</p> <p>9 seven. Yes.</p> <p>10 Q. Okay. So the potential creditors</p> <p>11 are seven, and there's two of whom that are</p> <p>12 referred to in the second sentence, is that</p> <p>13 fair?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So if there are seven</p> <p>16 potential creditors -- I think you mentioned</p> <p>17 that there are eight proofs of debt that were</p> <p>18 filed?</p> <p>19 Do I have that right?</p> <p>20 A. From memory, yes.</p> <p>21 Q. And is that because one of the</p> <p>22 proofs of debt was resolved?</p> <p>23 A. Yes.</p> <p>24 Q. And that proof of debt that was</p> <p>25 resolved was paid in full, correct?</p>	<p style="text-align: right;">Page 92</p> <p>1 G. ROBINSON</p> <p>2 Q. And are those commissions subject</p> <p>3 to the proof-of-debt process?</p> <p>4 A. Not at this stage.</p> <p>5 Q. Why not?</p> <p>6 A. No -- no -- no member has written</p> <p>7 to the liquidators.</p> <p>8 Q. So as of today no claim has been</p> <p>9 made for the payment of a member's commission,</p> <p>10 is that fair?</p> <p>11 A. In the Ascentra liquidation?</p> <p>12 Q. Yes, sir.</p> <p>13 A. No.</p> <p>14 Q. That's not fair?</p> <p>15 A. Sorry. No, they have not</p> <p>16 submitted ...</p> <p>17 Q. Have members made claims for</p> <p>18 commissions in any other liquidation that's</p> <p>19 related to Ascentra Holdings, Inc.?</p> <p>20 A. No.</p> <p>21 Q. Would you have an obligation as the</p> <p>22 joint official liquidator to pay the member</p> <p>23 claim if you believe today that the claim was</p> <p>24 valid?</p> <p>25 MR. McDONALD: Objection to form.</p>

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2 A. Say the question again? Sorry.

3 Q. In your capacity as a joint

4 official liquidator, would you be duty-bound

5 to pay the commissions if you concluded that

6 they were a due and valid obligation of the

7 Ascentra Holdings, Inc. company?

8 MR. McDONALD: Objection to form.

9 A. If we've gone through the

10 verification process and we believed they were

11 due and payable, then they would be paid as

12 part of the liquidation process.

13 Q. And did you, in your capacity as

14 the joint official liquidator, undertake a

15 review of whether any membership commissions

16 were due by Ascentra Holdings, Inc.?

17 A. Yes.

18 Q. And have you concluded that no

19 membership commissions are due by Ascentra

20 Holdings, Inc.?

21 MR. McDONALD: Objection to form.

22 A. Say the question again?

23 Q. Have you concluded that Ascentra

24 Holdings, Inc. doesn't owe any membership

25 commissions?

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1 G. ROBINSON

2 A. I have not concluded that, no.

3 Q. You're still reviewing it?

4 A. The review process of the

5 commissions has not been finalized.

6 Q. Okay. But no member has made a

7 claim for commission, correct?

8 A. No member has made a claim for

9 commission in the Ascentra liquidation,

10 correct.

11 Q. Okay. Has any member made a claim

12 for commission in any other liquidation that

13 you are involved with?

14 A. No.

15 Q. Other than the seven disputed

16 claims or proofs of debt that you've

17 identified, are you aware of any other

18 contingent obligation that Ascentra Holdings,

19 Inc. has?

20 MR. McDONALD: Objection to form.

21 A. No.

22 Q. Looking down, still staying with

23 the same report --

24 A. Okay.

25 Q. -- towards the end it says, quote,

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2 "The liquidators also received three

3 additional proofs of debt from Mr. Sanders on

4 November 10, 2023, which have not been

5 adjudicated yet."

6 Have I read that correctly?

7 A. You have.

8 Q. And are those three proofs of debt

9 among the eight that you identified earlier?

10 A. Yes.

11 Q. Okay. Does Mr. Sanders have any

12 other proofs of debt -- withdrawn.

13 Have any proofs of debt been filed

14 on Mr. Sanders' behalf other than those three?

15 A. No.

16 Q. And are those three proofs of debt,

17 are they filed on behalf of different entities

18 that are either owned or controlled by

19 Mr. Sanders, to the best of your knowledge?

20 A. Yes.

21 Q. So that among -- when you said

22 earlier that there were seven different

23 claim-holders or potential claim-holders,

24 three of them were affiliated with

25 Mr. Sanders, right?

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1 G. ROBINSON

2 A. Yes.

3 Q. Okay. Of the other four, is there

4 any affiliation between the holders of those

5 potential claims?

6 A. No.

7 Q. So you've got Mr. Sanders plus four

8 other folks who collectively hold seven

9 disputed claims, correct?

10 A. Yes.

11 Q. Okay. Can you describe for me the

12 nature of the three proofs of debt that were

13 filed on behalf of Mr. Sanders?

14 MR. McDONALD: Objection to form.

15 To the extent you can disclose

16 that.

17 A. No, we probably -- I probably

18 discussed the proof of debts with my Cayman

19 counsel, so I would say those discussions are

20 privileged.

21 Q. But you've discussed it with

22 somebody representing Mr. Sanders, right?

23 A. My attorneys have spoken to

24 Mr. Sanders' attorneys.

25 Q. Okay. So focussing on those

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<p>1 G. ROBINSON</p> <p>2 discussions, do you know what the nature of</p> <p>3 Mr. Sanders' claim is?</p> <p>4 Have you read the proofs of debt</p> <p>5 that were filed on behalf of Mr. Sanders?</p> <p>6 A. Yes.</p> <p>7 Q. Do you have an understanding as to</p> <p>8 the nature of the claim?</p> <p>9 A. He claims he's owed money.</p> <p>10 Q. Does he state why he believes he's</p> <p>11 owed money?</p> <p>12 A. He does.</p> <p>13 DIR Q. Does he cite to any contract that</p> <p>14 he believes he's entitled to recover damages</p> <p>15 for, for breach?</p> <p>16 MR. McDONALD: I'm going to object.</p> <p>17 Those proofs of debt are still</p> <p>18 confidential and the nature of those</p> <p>19 claims and the nature of the</p> <p>20 disagreement over those claims and the</p> <p>21 negotiation of those claims are sealed</p> <p>22 under -- as part of the report to the</p> <p>23 court.</p> <p>24 MR. MORRIS: So you're not going to</p> <p>25 let him tell me if there's a contract</p>	<p>1 G. ROBINSON</p> <p>2 with the court, or are they just given to you</p> <p>3 in your capacity as the joint official</p> <p>4 liquidator?</p> <p>5 A. Just to me.</p> <p>6 Q. Okay. So these are documents that</p> <p>7 have not been filed with the court, correct?</p> <p>8 A. There's no requirement to file</p> <p>9 proof of debts separately into the Cayman</p> <p>10 court.</p> <p>11 Q. I appreciate that there's no</p> <p>12 requirement. I'm just asking you if it</p> <p>13 happened.</p> <p>14 To the best of your knowledge, were</p> <p>15 Mr. Sanders' proofs of debt filed with the</p> <p>16 Cayman court?</p> <p>17 A. No.</p> <p>18 Q. Okay. Can you share with me</p> <p>19 anything about the nature of the claims that</p> <p>20 were delivered to you but not filed with the</p> <p>21 Cayman court?</p> <p>22 A. Say that question again? Sorry.</p> <p>23 Q. Can you tell me the amount of any</p> <p>24 of the three claims that were given to you but</p> <p>25 not filed with the court?</p>
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<p>1 G. ROBINSON</p> <p>2 claim or a tort claim?</p> <p>3 MR. McDONALD: No.</p> <p>4 Q. Do you dispute Mr. Sanders' claims?</p> <p>5 A. The verification process is still</p> <p>6 ongoing. So ...</p> <p>7 Q. You haven't agreed to pay the</p> <p>8 claims, is that fair?</p> <p>9 A. The verification process is still</p> <p>10 ongoing.</p> <p>11 Q. Do you dispute the validity of the</p> <p>12 claims or the amount of the claims?</p> <p>13 A. The verification process is still</p> <p>14 ongoing.</p> <p>15 Q. Can you describe for me what the</p> <p>16 verification process is?</p> <p>17 A. We review the proof of debts and</p> <p>18 make an assessment on whether it's valid or</p> <p>19 invalid.</p> <p>20 Q. And when did he file the proofs of</p> <p>21 debt?</p> <p>22 MR. McDONALD: Objection to form.</p> <p>23 A. I believe we received them in early</p> <p>24 November 2023.</p> <p>25 Q. And are the proofs of debt filed</p>	<p>1 G. ROBINSON</p> <p>2 MR. McDONALD: Again, that</p> <p>3 information is subject to the seal</p> <p>4 order.</p> <p>5 MR. MORRIS: But it wasn't filed</p> <p>6 with the court, right?</p> <p>7 MR. McDONALD: The report</p> <p>8 discussing the claims has been filed</p> <p>9 with the court. The claims have been</p> <p>10 received by the liquidator.</p> <p>11 MR. MORRIS: And that's all I'm</p> <p>12 asking about, is the claims -- I don't</p> <p>13 care about any report filed with the</p> <p>14 court.</p> <p>15 So let me ask the question again.</p> <p>16 MR. McDONALD: So --</p> <p>17 MR. MORRIS: Let me ask the</p> <p>18 question again.</p> <p>19 MR. McDONALD: Okay.</p> <p>20 DIR Q. The claims that were given to you</p> <p>21 but not filed with the Court, can you tell me</p> <p>22 what the amount of those claims are?</p> <p>23 MR. McDONALD: I object.</p> <p>24 Direct the witness not to answer.</p> <p>25 The inspection of those proofs of</p>



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<p style="text-align: right;">Page 101</p> <p>1 G. ROBINSON</p> <p>2 debt are limited to creditors and</p> <p>3 contributories and are to be kept</p> <p>4 confidential. The discussion of those</p> <p>5 are contained in a report that is filed</p> <p>6 with the court and is subject to seal.</p> <p>7 MR. MORRIS: Just help me</p> <p>8 understand, Hugh. Is there an order</p> <p>9 that was entered in this case that</p> <p>10 you're relying upon, or is it a Cayman</p> <p>11 Islands law?</p> <p>12 MR. McDONALD: It's a combination</p> <p>13 of both. There is, within the Cayman</p> <p>14 Islands, the Companies Act, as well as</p> <p>15 in the rules, a restriction on who can</p> <p>16 inspect proofs of debt, and the</p> <p>17 discussion of those proofs of debt are</p> <p>18 contained in a report that are subject</p> <p>19 to a court order sealing them.</p> <p>20 And so --</p> <p>21 MR. MORRIS: Okay. To be clear I'm</p> <p>22 not asking about that report.</p> <p>23 MR. McDONALD: I understand that.</p> <p>24 But the contents of those proofs of debt</p> <p>25 are discussed in a report that is</p>	<p style="text-align: right;">Page 103</p> <p>1 G. ROBINSON</p> <p>2 of debts, yes.</p> <p>3 Q. Okay. And do you have any</p> <p>4 reason -- do you have any expectation that</p> <p>5 they will be filed? Is it more than a hope?</p> <p>6 But based on your work, has anybody -- you</p> <p>7 know, do you have any expectation --</p> <p>8 MR. McDONALD: Wait for him to</p> <p>9 finish.</p> <p>10 Q. Okay. Do you have any reason to</p> <p>11 believe that somebody's going to file further</p> <p>12 proofs of debt? In the Ascentra Holdings,</p> <p>13 Inc. case.</p> <p>14 A. Just from experience of being a</p> <p>15 joint official liquidator and being involved</p> <p>16 in restructuring for 30-odd years, you expect</p> <p>17 the unexpected.</p> <p>18 Q. Okay. Other than that, do you have</p> <p>19 any reason to expect that any additional</p> <p>20 proofs of debt will be filed in the Ascentra</p> <p>21 Holdings, Inc. case?</p> <p>22 A. No.</p> <p>23 Q. Thank you.</p> <p>24 MR. MORRIS: Let's mark as the next</p> <p>25 exhibit another report that was given to</p>
<p style="text-align: right;">Page 102</p> <p>1 G. ROBINSON</p> <p>2 subject to a seal.</p> <p>3 MR. MORRIS: Okay. And you guys</p> <p>4 will follow up with the identity of the</p> <p>5 order that you're relying on and the</p> <p>6 law, right?</p> <p>7 MR. McDONALD: Mm-hmm.</p> <p>8 MR. MORRIS: Okay.</p> <p>9 BY MR. MORRIS:</p> <p>10 Q. Is there a deadline for the filing</p> <p>11 of proofs of debt in this case, in the Cayman</p> <p>12 Islands?</p> <p>13 A. No.</p> <p>14 Q. Based on your review of the</p> <p>15 records, do you have any reason to believe --</p> <p>16 withdrawn.</p> <p>17 Based on your work as a joint</p> <p>18 official liquidator, do you have any</p> <p>19 expectation that any additional proofs of debt</p> <p>20 are likely to be filed?</p> <p>21 MR. McDONALD: Objection to form.</p> <p>22 A. Specifically to the Ascentra --</p> <p>23 Q. Yes.</p> <p>24 A. -- liquidation?</p> <p>25 I'm hopeful there's no other proof</p>	<p style="text-align: right;">Page 104</p> <p>1 G. ROBINSON</p> <p>2 the court in New York.</p> <p>3 THE WITNESS: Can we just do a</p> <p>4 five-minute toilet break?</p> <p>5 MR. MORRIS: Sure, you bet.</p> <p>6 THE VIDEOGRAPHER: This ends</p> <p>7 unit 3. We're off the record at 11:52.</p> <p>8 (Recess taken.)</p> <p>9 THE VIDEOGRAPHER: This begins</p> <p>10 unit 4. We're on the record at 12:03.</p> <p>11 (Robinson Exhibit 6, Letter to the</p> <p>12 Court dated June 30, 2023 was marked for</p> <p>13 identification.)</p> <p>14 BY MR. MORRIS:</p> <p>15 Q. All right. Mr. Robinson, you have</p> <p>16 in front of you what has been marked as</p> <p>17 Robinson exhibit 6. It's another document</p> <p>18 that was filed with the court.</p> <p>19 Have you taken a moment to look</p> <p>20 at it?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. And you saw it before it was</p> <p>23 filed, is that right?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Directing your attention to</p>

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<p style="text-align: right;">Page 105</p> <p>1 G. ROBINSON</p> <p>2 the second paragraph on the first page,</p> <p>3 there's a statement in there that says, quote,</p> <p>4 "As a result of various shareholder disputes,</p> <p>5 on June 1, 2021 Ascentra was placed into</p> <p>6 voluntary liquidation in the Cayman Islands by</p> <p>7 its shareholders."</p> <p>8 Have I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. And is that accurate, to the best</p> <p>11 of your knowledge?</p> <p>12 A. To the best of my knowledge, yes.</p> <p>13 Q. Okay. Are you aware of any reason</p> <p>14 that Ascentra was placed in voluntary</p> <p>15 liquidation other than various shareholder</p> <p>16 disputes?</p> <p>17 A. No.</p> <p>18 Q. Thank you.</p> <p>19 And if you can go to the second</p> <p>20 page on the back of the document. The end of</p> <p>21 the middle paragraph says, quote, "Further,</p> <p>22 the liquidators have corresponded with various</p> <p>23 potential creditors of Ascentra and requested</p> <p>24 proofs of debt to be submitted."</p> <p>25 Did I read that correctly?</p>	<p style="text-align: right;">Page 107</p> <p>1 G. ROBINSON</p> <p>2 got a pretty simple function, and that is to</p> <p>3 get in the assets, realize the assets, and</p> <p>4 then distribute the assets to the creditors.</p> <p>5 And one of my jobs as a joint</p> <p>6 official liquidator is to approve creditor</p> <p>7 claims, and that's in a quasi-judicial way as</p> <p>8 an officer of the court. So that's what we</p> <p>9 do.</p> <p>10 Q. So is it fair to say that you</p> <p>11 request a proof of debt if somebody comes to</p> <p>12 you and says the entity that's being</p> <p>13 liquidated owes them money, and then you say,</p> <p>14 well, send me a proof of debt and we'll figure</p> <p>15 it out?</p> <p>16 A. Yeah, there's no right or wrong way</p> <p>17 of how a proof is received or not received or</p> <p>18 how you agree a claim. But yeah, one way</p> <p>19 would be, if someone came to you and requested</p> <p>20 a claim they were owed money, you would enter</p> <p>21 correspondence and you could request they</p> <p>22 submit a formal proof of debt.</p> <p>23 Q. Okay. And this is the process that</p> <p>24 led to the seven remaining proofs of debt,</p> <p>25 correct? That are disputed.</p>
<p style="text-align: right;">Page 106</p> <p>1 G. ROBINSON</p> <p>2 A. Which paragraph is that?</p> <p>3 Q. It's the middle one that begins "In</p> <p>4 the Cayman proceeding."</p> <p>5 A. Okay.</p> <p>6 Q. So now I'm looking at the last</p> <p>7 sentence that begins "Further --</p> <p>8 A. Oh, "Further." I see it. Sorry.</p> <p>9 I see it.</p> <p>10 Q. That's okay. Are you with me now?</p> <p>11 Take a moment to read it.</p> <p>12 A. Okay, yes.</p> <p>13 Q. And so this is dated in June.</p> <p>14 Would this have been part of the process of</p> <p>15 soliciting the proofs of debt that resulted</p> <p>16 in, I guess, the ones that we talked about</p> <p>17 earlier?</p> <p>18 A. Yeah, these -- these relate to the</p> <p>19 creditors we discussed previously. Yes.</p> <p>20 Q. Okay. And under what</p> <p>21 circumstances, if you recall, did you request</p> <p>22 that proofs of debt be submitted? Like, why</p> <p>23 do you do that?</p> <p>24 MR. McDONALD: Objection to form.</p> <p>25 A. Well, the official liquidator has</p>	<p style="text-align: right;">Page 108</p> <p>1 G. ROBINSON</p> <p>2 MR. McDONALD: Objection to form.</p> <p>3 A. Yeah, creditors can come to you,</p> <p>4 and you can go to potential creditors as well.</p> <p>5 Q. Okay. How many proofs of debt did</p> <p>6 the joint official liquidators request, as</p> <p>7 opposed to how many proofs -- let's just start</p> <p>8 with there.</p> <p>9 How many did you request be filed?</p> <p>10 A. How many proof of debts did the</p> <p>11 joint official liquidators of Ascentra request</p> <p>12 from potential creditors?</p> <p>13 Q. Mm-hmm.</p> <p>14 A. I don't know the exact number from</p> <p>15 memory. Out of the eight that we received,</p> <p>16 from memory I would say we requested six.</p> <p>17 Q. And would they include Mr. Sanders'</p> <p>18 three?</p> <p>19 A. Yes.</p> <p>20 Q. Why did you request Mr. Sanders to</p> <p>21 file proofs of debt?</p> <p>22 A. I don't -- SPGK and the defendants,</p> <p>23 all the defendants are not an admitted</p> <p>24 creditor in the liquidation, and you are not</p> <p>25 entitled to that information.</p>

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<p>1 G. ROBINSON</p> <p>2 THE COURT REPORTER: Can you just</p> <p>3 repeat that? All of defendants are</p> <p>4 not ...</p> <p>5 A. An admitted creditor in the</p> <p>6 liquidation under Cayman law.</p> <p>7 Q. So you believe you have a duty not</p> <p>8 to tell me the answer to the question because</p> <p>9 in your view SPGK is not entitled to receive</p> <p>10 it under Cayman law, is that right?</p> <p>11 A. Say that again? Sorry.</p> <p>12 Q. I just want to make sure that I</p> <p>13 understand. I don't mean to be contentious at</p> <p>14 all.</p> <p>15 You're refusing to answer my</p> <p>16 question because SPGK is not a creditor in the</p> <p>17 Ascentra Holdings, Inc. bankruptcy, is that</p> <p>18 right?</p> <p>19 A. I wouldn't -- I'm not refusing to</p> <p>20 answer your question. I can't answer your</p> <p>21 question.</p> <p>22 Q. Okay. That's --</p> <p>23 A. That's a big difference.</p> <p>24 Q. Well, you're refusing because you</p> <p>25 believe you have an obligation not to disclose</p>	<p>1 G. ROBINSON</p> <p>2 matters that we're talking about.</p> <p>3 Is that fair?</p> <p>4 A. Yeah. You're not an admitted</p> <p>5 creditor.</p> <p>6 Q. Okay. Let's start with what's an</p> <p>7 admitted creditor?</p> <p>8 A. A creditor that the claim has been</p> <p>9 admitted by the joint official liquidators.</p> <p>10 Q. Meaning that it's no longer</p> <p>11 disputed?</p> <p>12 A. Yes. It's admitted.</p> <p>13 Q. So Mr. Sanders is not an admitted</p> <p>14 creditor, is that right?</p> <p>15 A. Correct.</p> <p>16 MR. McDONALD: Objection to form.</p> <p>17 Q. So I appreciate what you're saying,</p> <p>18 and now I am going to ask you a different</p> <p>19 question.</p> <p>20 Even though they don't have the</p> <p>21 right to the information, is there any legal</p> <p>22 prohibition, to the best of your knowledge,</p> <p>23 that would prohibit you from disclosing it?</p> <p>24 A. Just say the question again?</p> <p>25 Sorry.</p>
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<p>1 G. ROBINSON</p> <p>2 it. Is that fair?</p> <p>3 A. Under Cayman law -- you are not an</p> <p>4 admitted creditor, and you're not entitled to</p> <p>5 that information under Cayman law.</p> <p>6 Q. Okay. So let me just ask you, as</p> <p>7 an experienced insolvency practitioner in the</p> <p>8 Cayman Islands and one licensed to serve as a</p> <p>9 liquidator, do you have any ability to share</p> <p>10 this information -- withdrawn.</p> <p>11 I understand your position that</p> <p>12 SPGK has no right to the information. My</p> <p>13 question for you: Is there anything that</p> <p>14 prohibits you from disclosing the information?</p> <p>15 MR. McDONALD: Objection to form.</p> <p>16 A. I think I'll just refer you to my</p> <p>17 previous answer.</p> <p>18 Q. And I'm trying to parse that</p> <p>19 through.</p> <p>20 I understand that you believe that</p> <p>21 under Cayman law -- and I don't mean to be</p> <p>22 contentious --</p> <p>23 A. That's okay.</p> <p>24 Q. -- that under Cayman law SPGK has</p> <p>25 no right to know anything about the subject</p>	<p>1 G. ROBINSON</p> <p>2 Q. Is there any legal impediment, you</p> <p>3 know, is there any legal prohibition that</p> <p>4 prevents you from disclosing the information,</p> <p>5 or it's just that SPGK has no right to</p> <p>6 receive it?</p> <p>7 A. SPGK has no right to receive it.</p> <p>8 Q. I understand. But is there any --</p> <p>9 do you have a legal duty not to disclose it,</p> <p>10 or is it just that they have no right to</p> <p>11 receive it?</p> <p>12 Do you understand the distinction</p> <p>13 that I'm making?</p> <p>14 MR. McDONALD: Yeah, I'm going to</p> <p>15 object. I think as I discussed earlier,</p> <p>16 the information concerning the proofs of</p> <p>17 debt is contained in reports that have</p> <p>18 been filed with the court that are</p> <p>19 subject to seal.</p> <p>20 So is there a legal impediment?</p> <p>21 Yes. He's an officer of the court, and</p> <p>22 he's bound by the orders of the court.</p> <p>23 MR. MORRIS: So is there any</p> <p>24 information at all that you are willing</p> <p>25 to let him testify to other than the</p>

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<p style="text-align: right;">Page 113</p> <p>1 G. ROBINSON</p> <p>2 number of outstanding disputed claims?</p> <p>3 MR. McDONALD: As to the nature and</p> <p>4 identity and basis for the claims and</p> <p>5 the nature of any disputes over the</p> <p>6 claims? No. He's not going to be able</p> <p>7 to testify.</p> <p>8 MR. MORRIS: And is that because</p> <p>9 the information was filed with the</p> <p>10 court, or is there something else that</p> <p>11 prohibits it?</p> <p>12 MR. McDONALD: It's a combination</p> <p>13 of the statute rules and orders of the</p> <p>14 court that prohibit him from disclosing</p> <p>15 that information.</p> <p>16 MR. MORRIS: Okay.</p> <p>17 Q. Okay. We're going to go to topic 5</p> <p>18 on the 30(b)(6) list, which was exhibit 1, and</p> <p>19 that relates to applications for sanction.</p> <p>20 Can you tell me what an application</p> <p>21 for sanction is, in the context of a Cayman</p> <p>22 Islands liquidation proceeding?</p> <p>23 A. Well, so to answer your question</p> <p>24 for me as a joint official liquidator,</p> <p>25 basically our powers are split between powers</p>	<p style="text-align: right;">Page 115</p> <p>1 G. ROBINSON</p> <p>2 Inc. proceedings in the Cayman Islands?</p> <p>3 MR. McDONALD: Objection to form.</p> <p>4 A. No creditor or potential creditor</p> <p>5 has applied for sanction, yes.</p> <p>6 Q. Okay. Is it your understanding as</p> <p>7 a licensed insolvency practitioner that</p> <p>8 creditors and potential creditors of an</p> <p>9 insolvent company or a company of doubtful</p> <p>10 insolvency have the ability to apply for</p> <p>11 sanction?</p> <p>12 MR. McDONALD: Objection. That's</p> <p>13 calling for a legal conclusion.</p> <p>14 Q. Okay. Subject to that objection</p> <p>15 you can answer.</p> <p>16 A. Just repeat the question for me,</p> <p>17 please?</p> <p>18 Q. Sure. As a licensed insolvency</p> <p>19 practitioner in the Cayman Islands, do</p> <p>20 creditors or potential creditors of insolvent</p> <p>21 companies or companies of doubtful insolvency,</p> <p>22 do they have a right to apply for sanction?</p> <p>23 MR. McDONALD: Objection; calls for</p> <p>24 a legal conclusion.</p> <p>25 Q. You can answer.</p>
<p style="text-align: right;">Page 114</p> <p>1 G. ROBINSON</p> <p>2 that we need the court sanction for and powers</p> <p>3 that we don't need sanction for.</p> <p>4 So ultimately we -- if there are</p> <p>5 certain things that we need to do as part of</p> <p>6 the liquidation process, then we would, with</p> <p>7 our counsel, we would make applications to the</p> <p>8 courts.</p> <p>9 Q. So there are certain things that</p> <p>10 you may want to do that you need court</p> <p>11 permission for, is that fair?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do creditors and the</p> <p>14 liquidation of a solvent entity have any</p> <p>15 ability to apply for sanction?</p> <p>16 A. They have no ability to apply for</p> <p>17 sanction.</p> <p>18 Q. Okay. And so then is it fair to</p> <p>19 say that no creditor or potential creditor of</p> <p>20 Ascentra Holdings, Inc. has ever applied for</p> <p>21 sanction in that case?</p> <p>22 A. Sorry. Just say that again?</p> <p>23 Q. Is it fair to say then that no</p> <p>24 creditor or potential creditor has applied</p> <p>25 for sanction of the Ascentra Holdings,</p>	<p style="text-align: right;">Page 116</p> <p>1 G. ROBINSON</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you know whether any</p> <p>4 potential creditor -- withdrawn.</p> <p>5 Do you know whether any creditor or</p> <p>6 potential creditor -- withdrawn.</p> <p>7 Is the Ascentra Holdings, Inc. case</p> <p>8 pending before a particular bankruptcy --</p> <p>9 withdrawn.</p> <p>10 Is the Ascentra Holdings, Inc. case</p> <p>11 pending before a particular judge in the</p> <p>12 Cayman Islands?</p> <p>13 A. Yes.</p> <p>14 Q. And what's the name of the judge?</p> <p>15 A. Doyle.</p> <p>16 Q. Doyle. Can I refer to him as Judge</p> <p>17 Doyle, or is it Justice Doyle?</p> <p>18 MR. COWAN: Mr. Justice Doyle.</p> <p>19 MR. MORRIS: Mr. Justice Doyle.</p> <p>20 Q. To the best of your knowledge,</p> <p>21 since the case was commenced has any creditor</p> <p>22 or potential creditor appeared before</p> <p>23 Mr. Justice Doyle?</p> <p>24 A. In the Ascentra liquidation?</p> <p>25 Q. Yes.</p>



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<p>1 G. ROBINSON</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Can you identify the</p> <p>4 creditor or potential creditor who appeared</p> <p>5 before Mr. Justice Doyle in the Ascentra</p> <p>6 bankruptcy case?</p> <p>7 A. Your defendants.</p> <p>8 Q. Okay. Is there any other creditor</p> <p>9 or potential creditor -- withdrawn.</p> <p>10 When you refer to my defendants</p> <p>11 you're referring to my clients who are the</p> <p>12 defendants in the complaint that was filed on</p> <p>13 your behalf in the Cayman Islands, is that</p> <p>14 right?</p> <p>15 A. That's the party that I'm</p> <p>16 referring to, if you said they have been in</p> <p>17 front -- they have appeared in the sanction,</p> <p>18 then yes.</p> <p>19 Q. Other than my clients, is there any</p> <p>20 other creditor or potential creditor who has</p> <p>21 ever appeared before Mr. Justice Doyle in the</p> <p>22 Ascentra Holdings, Inc. liquidation case?</p> <p>23 A. No.</p> <p>24 Q. Do you have access to the documents</p> <p>25 that are filed with the court in the Cayman</p>	<p>1 G. ROBINSON</p> <p>2 A. So have they appeared in something</p> <p>3 else?</p> <p>4 Q. Correct.</p> <p>5 A. Yes.</p> <p>6 Q. Do you have an understanding of</p> <p>7 what -- in what capacity they appeared before</p> <p>8 Mr. Justice Doyle other than as a defendant in</p> <p>9 that lawsuit?</p> <p>10 A. Say that again? Sorry.</p> <p>11 Q. It's okay. My clients have the</p> <p>12 information.</p> <p>13 MR. MORRIS: Let's move along.</p> <p>14 We've got -- the next document is</p> <p>15 what? ??</p> <p>16 THE COURT REPORTER: Yes.</p> <p>17 MR. MORRIS: It's going to be the</p> <p>18 foreign representatives' objection to</p> <p>19 the motion to terminate the restraint.</p> <p>20 THE WITNESS: Okay.</p> <p>21 (Robinson Exhibit 7, Foreign</p> <p>22 Representatives' Objection to Motion of</p> <p>23 SPGK to Terminate Restraint was marked</p> <p>24 for identification.)</p> <p>25 MR. McDONALD: I'm sorry, this was</p>
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<p>1 G. ROBINSON</p> <p>2 Islands?</p> <p>3 A. Only through my Cayman attorneys.</p> <p>4 Q. And is it one of your</p> <p>5 responsibilities to be at least generally</p> <p>6 familiar with the documents that are filed in</p> <p>7 the Cayman court in connection with the</p> <p>8 Ascentra Holdings, Inc. bankruptcy?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And in carrying out that</p> <p>11 responsibility, are you aware of any</p> <p>12 document that was filed in the Ascentra</p> <p>13 Holdings, Inc. liquidation case by a creditor</p> <p>14 or potential creditor other than my clients?</p> <p>15 A. No.</p> <p>16 Q. Thank you. Have my clients</p> <p>17 appeared in the Cayman case of Ascentra</p> <p>18 Holdings, Inc. in any capacity other than as</p> <p>19 defendants in the lawsuit that was commenced</p> <p>20 against them?</p> <p>21 MR. McDONALD: Objection to form.</p> <p>22 A. When you say "the lawsuit," are</p> <p>23 you referring to the one that we filed on the</p> <p>24 11th of October 2023?</p> <p>25 Q. Yes, sir.</p>	<p>1 G. ROBINSON</p> <p>2 7 you said?</p> <p>3 MR. MORRIS: Yes.</p> <p>4 THE COURT REPORTER: Yes.</p> <p>5 BY MR. MORRIS:</p> <p>6 Q. I'll just mark it to identify it,</p> <p>7 but I don't know that I am going to ask you</p> <p>8 any questions in hindsight.</p> <p>9 Is this the objection that was</p> <p>10 filed on your behalf in New York with respect</p> <p>11 to SPGK's motion to terminate the restraint on</p> <p>12 the Planet Payment funds?</p> <p>13 (The witness reviews document.)</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And if you turn to just</p> <p>16 page 27, I guess I'll ask one question.</p> <p>17 A. Twenty-seven. Okay.</p> <p>18 Q. In the middle of the page, under</p> <p>19 "Likelihood of Success on the Merits," you'll</p> <p>20 see there's a statement, "Second," quote, "as</p> <p>21 to the liquidators' claim to the Planet</p> <p>22 Payment Funds as set forth in detail above,</p> <p>23 the contractual and equitable bases remain and</p> <p>24 indeed are stronger following Mr. Yoshida's</p> <p>25 deposition."</p>

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<p style="text-align: right;">Page 121</p> <p>1 G. ROBINSON</p> <p>2 Do you see that?</p> <p>3 A. Where does it start?</p> <p>4 Q. The word "Second" begins at the end</p> <p>5 of about the fifth line down.</p> <p>6 A. Yes.</p> <p>7 Q. So I'm just focused on that</p> <p>8 particular sentence.</p> <p>9 A. Okay.</p> <p>10 Q. And do you understand that SPGK has</p> <p>11 asked the bankruptcy court in New York to lift</p> <p>12 the restriction on the funds that originated</p> <p>13 at Planet Payment?</p> <p>14 A. Yes.</p> <p>15 Q. And do you understand that your</p> <p>16 counsel on your behalf has opposed that motion</p> <p>17 saying that they have a legal and equitable</p> <p>18 right to the Planet Payment money?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And do you understand that</p> <p>21 topics 6 through 9 of the 30(b)(6) topics are</p> <p>22 intended to cover the documents and facts</p> <p>23 concerning your position as to the legal and</p> <p>24 equitable bases to the claim to the money?</p> <p>25 A. I've read paragraph 6 to 9.</p>	<p style="text-align: right;">Page 123</p> <p>1 G. ROBINSON</p> <p>2 against the Planet Payment money?</p> <p>3 MR. McDONALD: Objection.</p> <p>4 Q. You can answer.</p> <p>5 MR. McDONALD: It calls for the</p> <p>6 disclosure of attorney-client</p> <p>7 communication.</p> <p>8 MR. MORRIS: I'm not asking for</p> <p>9 anything about any communication. I'm</p> <p>10 asking for --</p> <p>11 MR. McDONALD: You're asking why.</p> <p>12 That was done in consultation with</p> <p>13 counsel.</p> <p>14 MR. MORRIS: Are you directing him</p> <p>15 not to answer?</p> <p>16 MR. McDONALD: I am directing him</p> <p>17 not to answer.</p> <p>18 MR. MORRIS: So if he was in front</p> <p>19 of the judge today and the judge said,</p> <p>20 "Why did you send me this," you would</p> <p>21 say, "I can't tell you"?</p> <p>22 You would direct him not to answer</p> <p>23 because --</p> <p>24 MR. McDONALD: It's an obligation</p> <p>25 of a foreign representative to apprise</p>
<p style="text-align: right;">Page 122</p> <p>1 G. ROBINSON</p> <p>2 Q. Okay.</p> <p>3 MR. MORRIS: Let's now mark as the</p> <p>4 next exhibit, which I guess is 9 --</p> <p>5 THE COURT REPORTER: 8.</p> <p>6 MR. McDONALD: 8.</p> <p>7 MR. MORRIS: 8. Thank you.</p> <p>8 -- a report to the Court dated</p> <p>9 October 11.</p> <p>10 (Robinson Exhibit 8, Letter to the</p> <p>11 Court dated October 11, 2023 was marked</p> <p>12 for identification.)</p> <p>13 BY MR. MORRIS:</p> <p>14 Q. Were you aware that this letter was</p> <p>15 sent to the court in New York in October 2023?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. And so did you authorize</p> <p>18 your counsel to give the judge in New York a</p> <p>19 copy of the pleading, the amended pleading</p> <p>20 that was filed in the Cayman Islands?</p> <p>21 A. Yes.</p> <p>22 DIR Q. And was the purpose of providing</p> <p>23 that to the Court so that the Court would see</p> <p>24 the contractual and equitable claims that the</p> <p>25 Ascentra Holdings, Inc. company was asserting</p>	<p style="text-align: right;">Page 124</p> <p>1 G. ROBINSON</p> <p>2 the court of any developments in the</p> <p>3 foreign jurisdiction, and we have done</p> <p>4 so. That is set forth in Chapter 15.</p> <p>5 Q. Is it your understanding that the</p> <p>6 complaint sets forth contractual and equitable</p> <p>7 bases for Ascentra Holdings, Inc. claim to the</p> <p>8 Planet Payment money?</p> <p>9 MR. McDONALD: Objection to form.</p> <p>10 A. Say the question again, please?</p> <p>11 Q. Is it your understanding that the</p> <p>12 complaint that was filed in the Cayman Islands</p> <p>13 sets forth the contractual and equitable bases</p> <p>14 for Ascentra Holdings, Inc.'s claim to the</p> <p>15 Planet Payment funds?</p> <p>16 A. The facts and documents that</p> <p>17 support our claim are set out in this amended</p> <p>18 complaint.</p> <p>19 DIR Q. Okay. I just have a few questions</p> <p>20 about that. If we can go to paragraph 37.</p> <p>21 Paragraph 37 identifies three</p> <p>22 specific agreements.</p> <p>23 Do I have that right?</p> <p>24 MR. McDONALD: I am going to object</p> <p>25 and direct the witness not to answer.</p>

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<p style="text-align: right;">Page 125</p> <p>1 G. ROBINSON</p> <p>2 We're not taking a deposition in the</p> <p>3 Cayman proceeding here. Your client has</p> <p>4 answered, asserted defenses and a</p> <p>5 counterclaim. We have responded. The</p> <p>6 matter is taking place in the Cayman</p> <p>7 Islands.</p> <p>8 MR. MORRIS: We don't need the</p> <p>9 speech. We understand it. You could</p> <p>10 just direct him not to answer on the</p> <p>11 account -- on account that there's a</p> <p>12 pending proceeding.</p> <p>13 MR. McDONALD: I'm directing him</p> <p>14 not to answer on account there's a</p> <p>15 pending proceeding.</p> <p>16 MR. MORRIS: Okay. But I am going</p> <p>17 to ask my questions anyway, and we'll</p> <p>18 make the record. Is that fair?</p> <p>19 MR. McDONALD: That's fine.</p> <p>20 MR. MORRIS: Okay.</p> <p>21 DIR Q. Does paragraph 37 set forth --</p> <p>22 identify three particular documents that were</p> <p>23 executed by SPGK Cayman?</p> <p>24 MR. McDONALD: The same</p> <p>25 instruction.</p>	<p style="text-align: right;">Page 127</p> <p>1 G. ROBINSON</p> <p>2 A. Yes.</p> <p>3 DIR Q. Do you know whether the legal</p> <p>4 and equitable bases for Ascentra Holdings,</p> <p>5 Inc. claim to the Planet Payment funds are set</p> <p>6 forth anywhere other than this document and</p> <p>7 exhibit 7?</p> <p>8 MR. McDONALD: The same objection.</p> <p>9 The same direction.</p> <p>10 MR. MORRIS: So we can't even find</p> <p>11 out if there's another place to look?</p> <p>12 MR. McDONALD: As I said, your</p> <p>13 client has submitted defenses. We have</p> <p>14 responded to those. There will be a</p> <p>15 hearing in the Caymans where additional</p> <p>16 evidence will be adduced and presented</p> <p>17 to the Court. So he's not testifying</p> <p>18 about that. That's all privileged, as</p> <p>19 to whether or not there will be anything</p> <p>20 else forthcoming in this matter.</p> <p>21 MR. MORRIS: Like I said, we'll</p> <p>22 either do the preclusion order or we'll</p> <p>23 do the follow-up. But I appreciate</p> <p>24 that.</p> <p>25 Can we take a break?</p>
<p style="text-align: right;">Page 126</p> <p>1 G. ROBINSON</p> <p>2 Q. Are you going to follow counsel's</p> <p>3 advice?</p> <p>4 A. Yes.</p> <p>5 DIR Q. Okay. Are these documents relevant</p> <p>6 to Ascentra Holdings, Inc.'s claim to the</p> <p>7 Planet Payment funds?</p> <p>8 MR. McDONALD: Objection. The same</p> <p>9 direction.</p> <p>10 Q. Are you going to follow counsel's</p> <p>11 advice?</p> <p>12 A. Yes.</p> <p>13 DIR Q. Have you personally reviewed these</p> <p>14 three documents?</p> <p>15 MR. McDONALD: Objection. The same</p> <p>16 direction.</p> <p>17 Q. Are you going to follow counsel's</p> <p>18 advice?</p> <p>19 A. Yes.</p> <p>20 DIR Q. Do you know why these three</p> <p>21 documents are cited in this complaint?</p> <p>22 MR. McDONALD: The same objection.</p> <p>23 The same direction.</p> <p>24 Q. Are you going to follow counsel's</p> <p>25 advice?</p>	<p style="text-align: right;">Page 128</p> <p>1 G. ROBINSON</p> <p>2 MR. McDONALD: Sure.</p> <p>3 THE VIDEOGRAPHER: This ends</p> <p>4 unit 4. We're off the record at 12:32.</p> <p>5 (Recess taken.)</p> <p>6 THE VIDEOGRAPHER: This begins</p> <p>7 unit 5. We're on the record at 12:44.</p> <p>8 BY MR. MORRIS:</p> <p>9 Q. Mr. Robinson, can you grab exhibit</p> <p>10 number 1, please.</p> <p>11 A. Okay.</p> <p>12 DIR Q. Look at topic 6.</p> <p>13 Can you identify for me the</p> <p>14 documents that the foreign representatives</p> <p>15 contend support their assertion that they can</p> <p>16 establish a likelihood of success on the</p> <p>17 merits with respect to their contractual basis</p> <p>18 for entitlement to the Planet Payment funds?</p> <p>19 MR. McDONALD: Objection.</p> <p>20 I direct the witness not to answer</p> <p>21 on the basis of a pending proceeding.</p> <p>22 Q. Are you going to follow counsel's</p> <p>23 advice?</p> <p>24 A. Yes.</p> <p>25 DIR Q. Can you turn the page, please, to</p>

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<p>1 G. ROBINSON</p> <p>2 number 7.</p> <p>3 Can you describe for me all facts</p> <p>4 that the foreign representatives contend</p> <p>5 support their assertion that they can</p> <p>6 establish a likelihood of success on the</p> <p>7 merits with respect to a contractual basis for</p> <p>8 entitlement to the Planet Payment funds?</p> <p>9 MR. McDONALD: The same objection.</p> <p>10 The same direction.</p> <p>11 Also calls for divulging</p> <p>12 attorney-client communications.</p> <p>13 Q. You are going to follow counsel's</p> <p>14 advice?</p> <p>15 A. Yes.</p> <p>16 MR. MORRIS: To be clear, I'm not</p> <p>17 asking for any attorney-client</p> <p>18 privileged communications. I'm just</p> <p>19 asking for facts.</p> <p>20 MR. McDONALD: Understood.</p> <p>21 MR. MORRIS: Okay. So I want to</p> <p>22 just --</p> <p>23 MR. McDONALD: The same objection.</p> <p>24 The same direction.</p> <p>25 MR. MORRIS: Okay.</p>	<p>1 G. ROBINSON</p> <p>2 asking for documents.</p> <p>3 Q. Number 9. Can you please -- are</p> <p>4 you going to follow counsel's advice?</p> <p>5 A. Yes.</p> <p>6 DIR Q. Number 9. Can you please share</p> <p>7 with us the facts that the foreign</p> <p>8 representatives contend support their</p> <p>9 assertion that they can establish a likelihood</p> <p>10 of success on the merits with respect to an</p> <p>11 equitable basis for entitlement to the Planet</p> <p>12 Payment funds?</p> <p>13 MR. McDONALD: The same objection.</p> <p>14 The same direction.</p> <p>15 Q. Are you going to follow counsel's</p> <p>16 advice?</p> <p>17 A. Yes.</p> <p>18 DIR Q. Do you know if Ascentra Holdings,</p> <p>19 Inc. ever had a contract with Planet Payment</p> <p>20 for any purpose?</p> <p>21 MR. McDONALD: Objection; the same</p> <p>22 direction.</p> <p>23 Q. Are you going to follow counsel's</p> <p>24 advice?</p> <p>25 A. Yes.</p>
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<p>1 G. ROBINSON</p> <p>2 DIR Q. Looking at topic number 8, can you</p> <p>3 please tell me all of the documents that the</p> <p>4 foreign representatives contend support their</p> <p>5 assertion that they can establish a likelihood</p> <p>6 of success on the merits with respect to an</p> <p>7 equitable basis for entitlement to the Planet</p> <p>8 Payment funds?</p> <p>9 MR. McDONALD: The same objection.</p> <p>10 The same direction.</p> <p>11 MR. MORRIS: Does that include</p> <p>12 attorney-client privilege or just the</p> <p>13 pending-proceeding objection?</p> <p>14 MR. McDONALD: You said you're not</p> <p>15 asking for any attorney-client</p> <p>16 privileged information.</p> <p>17 MR. MORRIS: Correct.</p> <p>18 MR. McDONALD: So I'm just going</p> <p>19 with the same objection, the same</p> <p>20 direction.</p> <p>21 MR. MORRIS: Thank you.</p> <p>22 MR. McDONALD: And to the extent it</p> <p>23 does call for divulging attorney-client</p> <p>24 privilege, as I said before ...</p> <p>25 MR. MORRIS: But, again, I'm just</p>	<p>1 G. ROBINSON</p> <p>2 DIR Q. Do you know whether any subsidiary</p> <p>3 of Ascentra Holdings, Inc. ever had a contract</p> <p>4 of any kind with Planet Payment?</p> <p>5 MR. McDONALD: The same direction.</p> <p>6 The same objection. The same direction.</p> <p>7 Q. Are you going to follow counsel's</p> <p>8 advice?</p> <p>9 A. Yes.</p> <p>10 DIR Q. Does Ascentra Holdings, Inc. rely</p> <p>11 upon the cancellation agreement to support its</p> <p>12 claim to the Planet Payment funds?</p> <p>13 MR. McDONALD: The same objection.</p> <p>14 The same direction.</p> <p>15 Q. Are you going to follow counsel's</p> <p>16 advice?</p> <p>17 A. Yes.</p> <p>18 DIR Q. Do you understand what the</p> <p>19 cancellation is agreement -- withdrawn.</p> <p>20 Do you understand what the</p> <p>21 cancellation agreement is that I referred to?</p> <p>22 MR. McDONALD: The same</p> <p>23 direction -- the same objection. The</p> <p>24 same direction.</p> <p>25 MR. MORRIS: All right. I'll show</p>



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1 G. ROBINSON  
2 it to him just so there's no ambiguity.  
3 Let's mark as the next exhibit --  
4 What is it, number 9?  
5 THE COURT REPORTER: Yes, sir.  
6 MR. MORRIS: -- the cancellation  
7 agreement.  
8 (Robinson Exhibit 9, Exhibit E to  
9 declaration of Graham Robinson was  
10 marked for identification.)  
11 Q. Have you seen this document  
12 before, sir?  
13 A. Yes.  
14 Q. And do you recall that this  
15 document was attached as an exhibit to one of  
16 the declarations that was filed on your behalf  
17 in the Ascentra Holdings, Inc. Chapter 15  
18 matter?  
19 A. Yes.  
20 DIR Q. Okay. Does Ascentra Holdings,  
21 Inc. rely on this document in any way to  
22 support its contention that it's likely to  
23 succeed on the merits of its claim to the  
24 Planet Payment funds?  
25 MR. McDONALD: The same objection.

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1 G. ROBINSON  
2 The same direction.  
3 Q. Are you going to follow counsel's  
4 advice?  
5 A. Yes.  
6 MR. MORRIS: Let's take one more  
7 short break.  
8 Hold it. Before we go off the  
9 record.  
10 Are you going to direct him not to  
11 answer any question that concerns any  
12 allegation or assertion that's set forth  
13 in the complaint?  
14 MR. McDONALD: Yes.  
15 MR. MORRIS: And if you are given  
16 those directions, do you intend to  
17 follow them?  
18 THE WITNESS: Yes.  
19 MR. MORRIS: Would you direct him  
20 not to answer any question relating to  
21 any allegation or contention set forth  
22 in the objection that was filed on  
23 behalf of Ascentra Holdings that was  
24 marked as one of the earlier exhibits?  
25 MR. McDONALD: Yes.

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1 G. ROBINSON  
2 MR. MORRIS: And would you follow  
3 counsel's advice in that regard?  
4 THE WITNESS: Yes.  
5 MR. MORRIS: Okay. Now let's go  
6 off the record, and we may just be done.  
7 MR. McDONALD: Okay.  
8 THE VIDEOGRAPHER: This ends  
9 unit 5. We're off the record at 12:51.  
10 (Pause in proceedings.)  
11 THE VIDEOGRAPHER: This begins  
12 unit 6. We're on the record at 12:56.  
13 MR. MORRIS: Okay. Just a couple  
14 of more questions I think. In light of  
15 the instructions that you've been given,  
16 I don't want to waste people's time  
17 here.  
18 BY MR. MORRIS:  
19 DIR Q. Can you tell me what relief  
20 Ascentra Holdings, Inc. is seeking against  
21 SPGK in the Cayman Islands?  
22 MR. McDONALD: The same objection.  
23 The same direction.  
24 Q. Are you going to follow counsel's  
25 advice?

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1 G. ROBINSON  
2 A. Yes.  
3 DIR Q. Are you seeking anything other than  
4 the recovery of money from SPGK?  
5 MR. McDONALD: The same objection.  
6 The same direction.  
7 Q. Are you going to follow counsel's  
8 advice?  
9 A. Yes.  
10 MR. MORRIS: I have no further  
11 questions. You know, subject to the  
12 reservation of rights that I made early  
13 on about either seeking a preclusion  
14 order or motion to compel. But I don't  
15 want to waste anybody's time here.  
16 So --  
17 MR. McDONALD: We appreciate that.  
18 MR. MORRIS: -- I'm done for the  
19 day.  
20 MR. McDONALD: Okay.  
21 THE VIDEOGRAPHER: This is the  
22 videographer.  
23 Will anyone be ordering the video?  
24 MR. McDONALD: No.  
25 MR. MORRIS: Yes, we will.

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<p>1 DEPOSITION ERRATA SHEET</p> <p>2 Our Assignment No. J10806182</p> <p>3 Case Caption: In re Ascentra Holdings, Inc.</p> <p>4</p> <p>5 DECLARATION UNDER PENALTY OF PERJURY</p> <p>6 I declare under penalty of perjury that I have</p> <p>7 read the entire transcript of my deposition taken in</p> <p>8 the above-captioned matter or the same has been read</p> <p>9 to me, and the same is true and accurate, save and</p> <p>10 except for changes and/or corrections, if any, as</p> <p>11 indicated by me on the DEPOSITION ERRATA SHEET</p> <p>12 hereof, with the understanding that I offer these</p> <p>13 changes as if still under oath.</p> <p>14 Signed on the _____ day of _____</p> <p>15 20____.</p> <p>16 _____</p> <p>17 GRAHAM ROBINSON</p> <p>18</p> <p>19 Subscribed and sworn to on the ____ day of</p> <p>20 _____ 20 ____ before me.</p> <p>21 _____</p> <p>22 Notary Public, in and for the State of</p> <p>23 _____.</p> <p>24</p> <p>25</p>	<p>1 DEPOSITION ERRATA PAGE</p> <p>2 Page No. ____ Line No. ____ Change to: _____</p> <p>3</p> <p>4 Reason for change: _____</p> <p>5 Page No. ____ Line No. ____ Change to: _____</p> <p>6</p> <p>7 Reason for change: _____</p> <p>8 Page No. ____ Line No. ____ Change to: _____</p> <p>9</p> <p>10 Reason for change: _____</p> <p>11 Page No. ____ Line No. ____ Change to: _____</p> <p>12</p> <p>13 Reason for change: _____</p> <p>14 Page No. ____ Line No. ____ Change to: _____</p> <p>15</p> <p>16 Reason for change: _____</p> <p>17 Page No. ____ Line No. ____ Change to: _____</p> <p>18</p> <p>19 Reason for change: _____</p> <p>20 Page No. ____ Line No. ____ Change to: _____</p> <p>21</p> <p>22 Reason for change: _____</p> <p>23</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 GRAHAM ROBINSON</p>
<p>1 DEPOSITION ERRATA PAGE</p> <p>2 Page No. ____ Line No. ____ Change to: _____</p> <p>3</p> <p>4 Reason for change: _____</p> <p>5 Page No. ____ Line No. ____ Change to: _____</p> <p>6</p> <p>7 Reason for change: _____</p> <p>8 Page No. ____ Line No. ____ Change to: _____</p> <p>9</p> <p>10 Reason for change: _____</p> <p>11 Page No. ____ Line No. ____ Change to: _____</p> <p>12</p> <p>13 Reason for change: _____</p> <p>14 Page No. ____ Line No. ____ Change to: _____</p> <p>15</p> <p>16 Reason for change: _____</p> <p>17 Page No. ____ Line No. ____ Change to: _____</p> <p>18</p> <p>19 Reason for change: _____</p> <p>20 Page No. ____ Line No. ____ Change to: _____</p> <p>21</p> <p>22 Reason for change: _____</p> <p>23 SIGNATURE: _____ DATE: _____</p> <p>24 GRAHAM ROBINSON</p> <p>25</p>	

## **EXHIBIT 2**





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December 29, 2023

**Via ECF**

Honorable David S. Jones  
United States Bankruptcy Court  
Southern District of New York  
One Bowling Green, Courtroom 701  
New York, NY 10004-1408

**Re: *In re Ascentra Holdings, Inc. (In Official Liquidation)*, Case No. 21-11854  
Fourth Letter to Court Re Status Report**

To the Honorable David S. Jones:

Pursuant to the Court's *Scheduling Order* [ECF No. 23], I write on behalf of Graham Robinson and Ivy Chua Suk Lin, the duly appointed joint official liquidators and foreign representatives (the "**Liquidators**" or "**Foreign Representatives**") of Ascentra Holdings, Inc. (In Official Liquidation) ("**Ascentra**") in the above-referenced case and submit this letter stating (a) the procedural status and nature of activities in this case and the Cayman Proceeding (defined below), and (b) what is anticipated in the ensuing six months.

At a status conference held before this Court on December 21, 2023 (the "**Status Conference**"), I presented to the Court an overview of the actions that the Liquidators have undertaken in furtherance of their statutory obligations under Cayman Islands law to preserve and collect Ascentra's assets for the benefit of its stakeholders—creditors and contributories (*i.e.*, shareholders)—and to distribute those assets in accordance with the Cayman Islands statutory priority scheme and ultimately dissolve Ascentra. The Liquidators sought recognition of Ascentra's foreign proceeding in the Cayman Islands (the "**Cayman Proceeding**") in aid of those statutory obligations. At the risk of repeating that presentation, I set out below the activities undertaken by the Liquidators in the Chapter 15 case and the Cayman Proceeding.



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### The Chapter 15 Case

The Foreign Representatives assume the Court's familiarity with the prior status reports filed with this Court [ECF Nos. 26, 29, and 34] and filings related to Shang Peng Gao Ke Inc. SEZC ("**SPGK Cayman**") and SPGK Pte Ltd's ("**SPGK Singapore**", and together with SPGK Cayman referred to as, "**SPGK**") motions to (i) terminate recognition of the Cayman Proceeding and (ii) lift the restraint against SPGK regarding funds previously held by Planet Payment Solutions LLC ("**Planet Payment**") [ECF Nos. 37, 42, 62, and 64], including this Court's December 5, 2023 decision resolving discovery disputes related to SPGK's motions [ECF No. 80].

As the Court is aware, this case and the Cayman Proceeding were commenced to preserve certain assets and investigate potential assets and claims against former Ascentra officers, directors and shareholders, and third-party vendors. To aid those efforts, the Court entered an order (the "**Recognition Order**") [ECF No. 22] recognizing the Cayman Proceeding as a foreign main proceeding, which imposed an automatic stay against actions against Ascentra and its assets within the territorial jurisdiction of the United States and entrusted the collection of Ascentra's assets to the Foreign Representatives. In addition, the Recognition Order provided for additional assistance to the Foreign Representatives under section 1521 of the Bankruptcy Code by (i) authorizing the Foreign Representatives to issue subpoenas and commence document discovery and (ii) permanently restrained the transfer of funds held by Planet Payment (the "**Planet Payment Funds**"). Since the last status update filed with the Court on June 30, 2023 [ECF No. 34], Ascentra, SPGK, and Planet Payment agreed to transfer the Planet Payment Funds into the Court's Disputed Ownership Fund (the "**Court Registry**") and the Court entered an order directing Planet Payment to pay the Planet Payment Funds into the Court Registry [ECF No. 60].

### *Investigation and Turnover of U.S. Assets*

Ever Innovation, Inc. ("**EII**"), a California corporation, acted as operations and technology support for Ascentra and its affiliated companies. Ascentra was EII's only client and funded the entirety of EII's operations up to the date of the termination of their contractual agreement on August 31, 2021. Prior to entry of the Recognition Order, EII turned over to Ascentra all of its servers and remotely stored back-up files.

After entry of the Recognition Order, as part of its investigation into potential litigation claims, Ascentra served subpoenas on EII, its CEO, Masami Nakano, and its Chief Technology Officer, James Koshimoto, seeking documents related to work performed by Ms. Nakano and Mr. Koshimoto for an Ascentra affiliated party. Ms. Nakano also agreed to and sat for an informal interview with the Liquidators and counsel.

The Liquidators' investigation has also led to the discovery of monies held by Theodore Sanders, the former Chief Financial Officer of Ascentra. Ascentra and Mr. Sanders have agreed to escrow the funds until Mr. Sanders' claims to the funds can be adjudicated (as discussed in more detail below).



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The Liquidators have also served a subpoena on International Payout Systems Inc. as part of its investigation into the calculation, booking, and payment of sales commissions to third party “leaders” or “affiliates”, individuals that marketed and sold Ascentra products in various Asian markets.

### **The Cayman Proceeding**

#### *Litigation Against SPGK and its Affiliates*

On September 20, 2023, the Liquidators filed an application with the Grand Court of the Cayman Islands (the “**Grand Court**”) seeking sanction (authorization) to bring claims against SPGK and its affiliates in connection with the sales proceeds paid into its bank accounts for the sale of Ascentra products. On September 25, 2023, the Grand Court sanctioned the Liquidators’ application.

On October 4, 2023, the Liquidators filed a Writ of Summons and Statement of Claim under case reference FSD 300 of 2023 (the “**Litigation**”) in the Grand Court against Ryunosuke Yoshida, SPGK, Growth Today, Inc., and Scuderia Bianco Pte Ltd. (the “**Defendants**”). An Amended Writ of Summons and Amended Statement of Claim was filed on October 11, 2023, and the Defendants acknowledged service of the Amended Statement of Claim on October 25, 2023, and submitted to the jurisdiction of the Cayman Islands. As reported to this Court [ECF No. 77], the Amended Statement of Claim alleges multiple claims against the Defendants, including breach of fiduciary duty, unjust enrichment and trust claims, and the lawsuit is a result of the Liquidators’ two-year investigations into claims and causes of action against Mr. Yoshida, SPGK and SPGK’s related entities. On December 22, 2023, the Defendants filed a defence and counterclaim.

Following the commencement of the Litigation, the Liquidators have been in regular correspondence with the Defendants. In particular, the Liquidators have asked the Defendants to agree to pay all of the disputed funds that are currently held in accounts in Taiwan (which, together with the funds currently held in the Court Registry, are the subject of the Litigation) into the Grand Court for their safekeeping while the dispute between the Liquidators and the Defendants is resolved, however, the Defendants have refused. Accordingly, the Liquidators have indicated that, in the absence of a consensual agreement, the Liquidators will be seeking an order from the Grand Court.

#### *Liquidation and Dissolution of Ascentra’s Affiliates*

Aside from the Litigation, the Liquidators have been proceeding with the liquidation and dissolution of Ascentra’s affiliates, including its subsidiary, HEC International Ltd. (“**HEC**”), which is the subject of an official winding up proceeding in the Cayman Islands. Mr. Graham Robinson is the sole liquidator of HEC (in such capacity, the “**Liquidator**”). As stated at the Status Conference, the Liquidator has made the initial determination that HEC is solvent, which would eventually entitle Ascentra to a dividend if the determination holds up.



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The Liquidator has been involved in defending claims asserted against HEC by SPGK Cayman, as a purported creditor. In the first instance, the Grand Court ruled in favor of HEC and denied SPGK Cayman leave to assert a proprietary claim to certain funds held by HEC. SPGK Cayman has appealed this decision. The judgment from the Cayman Islands Court of Appeal is currently pending.

Further, and in connection with the HEC liquidation, the Liquidator has been working to dissolve HEC's wholly owned Delaware subsidiary, iHealthscience, LLC ("iHS"). To that end, the Liquidator had to first wind-up iHS' Hong Kong branch, which was recently completed. The Liquidator is now completing the process of dissolving iHS under Delaware law.

The Liquidators are also in the process of liquidating a Taiwan subsidiary and a Hong Kong subsidiary, as part of the operational wind-down of the Ascentra group.

#### *Additional Actions Undertaken by the Liquidators*

The Liquidators continue to correspond with potential creditors and parties who have made claims in the liquidation by way of proof of debt. In that regard, two (2) proofs of debt filed have not yet been adjudicated because the underlying claims are based on damages in connection with warrants issued by Ascentra. Specifically, the Liquidators have not yet adjudicated these proofs of debt because, *inter alia*, the current amount of assets held by Ascentra would preclude a distribution to common shareholders. As stated in the most recent status report, the Liquidators have been in communication with these purported creditors. The Liquidators also received three (3) additional proofs of debt from Mr. Sanders on November 10, 2023, which have not yet been adjudicated. The Liquidators and their counsel have been in communication with Mr. Sanders and his Cayman counsel.

Finally, in the Singapore proceeding, on October 18, 2023, the Court of Appeal of the Republic of Singapore (the "**Court of Appeal**") reversed the High Court for the Republic of Singapore's (the "**High Court**") decision denying the Liquidators' application for recognition of the Cayman Proceeding in Singapore [ECF No. 78]. The appellate decision recognized the Cayman Proceeding. Following the decision, the Liquidators and SPGK Singapore filed written submissions on whether the recognition of the Cayman Proceeding in Singapore should be made subject to any conditions. Among others, SPGK Singapore has argued that the automatic stay under Article 20 of the Singapore Model Law should be terminated and that the Liquidators should be required to seek leave of the High Court before taking any investigation action. The Court of Appeal has yet to provide any direction on this issue.

#### **Expectations Over the Next Six Months**

In the instant case, in the next six (6) months, the Foreign Representatives will seek to finalize their investigations concerning Ascentra's assets, including their review and analysis of documents produced to date. Ascentra will be filing a reply to the Defendants' defence and a defence to the counterclaim filed in the Litigation. The Foreign Representatives' continued focus



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is to implement a strategy to wind down and close the operations of Ascentra and Ascentra's subsidiaries, including HEC and iHS.

Respectfully submitted,

/s/ John A. Pintarelli

John A. Pintarelli  
Partner

# **EXHIBIT 3**

ALEXANDER GRAY HENDERSON, KC  
ASCENTRA HOLDINGS, INC.

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<p style="text-align: right;">Page 1</p> <p>1 IN THE UNITED STATES BANKRUPTCY COURT 2 FOR THE SOUTHERN DISTRICT OF NEW YORK 3 -----x 4 In re 5 ASCENTRA HOLDINGS, INC. (In Official 6 Liquidation), Chapter 15 7 Case No.21-11854 (DSJ) 8 9 Debtor in a 10 Foreign Proceeding. 11 -----x 12 13 14 DEPOSITION OF ALEXANDER GRAY HENDERSON, KC 15 New York, New York 16 Thursday, September 28, 2023 17 18 19 20 21 22 23 Reported by: 24 Frank J. Bas, RPR, CRR 25 Job No. J10291184</p>	<p style="text-align: right;">Page 3</p> <p>1 A P P E A R A N C E S: 2 3 PILLSBURY WINTHROP SHAW PITTMAN LLP 4 Attorneys for Petitioners 5 31 West 52nd Street 6 New York, New York 10019 7 8 BY: HUGH M. McDONALD, ESQ. 9 (hugh.mcdonald@pillsburylaw.com) 10 JOHN A. PINTARELLI, ESQ. 11 (john.pintarelli@pillsburylaw.com) 12 -and- 13 PILLSBURY WINTHROP SHAW PITTMAN LLP 14 725 South Figueroa Street 15 Los Angeles, California 90017 16 BY: CLAIRE K. WU, ESQ. (Via Zoom) 17 (claire.wu@pillsburylaw.com) 18 19 CAMPBELLS LLP 20 JOLs Cayman Islands Counsel 21 Floor 4, Willow House, Cricket Square 22 Grand Cayman KY1-9010 23 Cayman Islands 24 BY: NIENKE LILLINGTON, ESQ. 25 (nllillington@campbellslegal.com) GUY COWAN, ESQ. (gcowan@campbellslegal.com)  KATIE LOGAN, ESQ. (Via Zoom) (klogan@campbellslegal.com)  BLAIR LEAHY KC (Via Zoom) For Joint Liquidators of Ascentra Holdings 20 Essex St. Chambers London, England, United Kingdom (bleahy@twentyessex.com)</p>
<p style="text-align: right;">Page 2</p> <p>1 2 3 September 28, 2023 4 9:19 a.m. EDT 5 6 Deposition of ALEXANDER GRAY 7 HENDERSON, KC, held at the offices of 8 Pachulski Stang Ziehl &amp; Jones, 780 Third 9 Avenue, New York, New York, before Frank J. 10 Bas, a Registered Professional Reporter, 11 Certified Realtime Reporter, and Notary Public 12 of the State of New York. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 A P P E A R A N C E S: 2 3 4 WILBERFORCE CHAMBERS 5 8 New Square, Lincoln's Inn 6 London, WC2A 3QP United Kingdom 7 8 BY: GRAEME HALKERSTON, Barrister (Via Zoom) 9 (ghalkerston@wilberforce.co.uk) 10 11 HARNEY WESTWOOD &amp; RIEGELS 12 3rd Floor, Harbour Place 13 103 South Church Street 14 Grand Cayman 15 PO Box 10240 KY1-1002 16 Cayman Islands 17 18 BY: JESSICA WILLIAMS, ESQ. (Via Zoom) 19 (jessica.williams@harneys.com) 20 21 PACHULSKI STANG ZIEHL JONES 22 Attorneys for SPGK Pte. Ltd. 23 780 Third Avenue 24 New York, New York 10017 25 26 BY: JOHN A. MORRIS, ESQ. 27 (jmorris@pszjlaw.com) 28 JEFFREY DINE, ESQ. 29 (jdine@pszjlaw.com) 30 31 ALSO PRESENT VIA ZOOM: 32 33 JAMES PARKINSON 34 CAITLIN MURDOCK, Harneys 35 ANDREW JOHNSTONE 36 ANDREA BIANCA 37 KWAME AKUFFO 38 ALIANA DODDS 39 40 - o o o -</p>

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1 A. Henderson  
2 THE COURT REPORTER: On the record.  
3 I'll ask counsel to state their  
4 appearances, for the record.  
5 MR. MORRIS: John Morris, Pachulski  
6 Stang Ziehl & Jones for SPGK.  
7 MR. DINE: Jeffrey Dine, Pachulski  
8 Stang Ziehl & Jones for SPGK.  
9 MR. McDONALD: Hugh McDonald,  
10 Pillsbury Winthrop Shaw Pittman for the  
11 foreign representatives of Ascentra  
12 Holdings.  
13 ---  
14  
15 ALEXANDER GRAY HENDERSON,  
16 called as a witness, having been first duly  
17 sworn by a Notary Public, was examined and  
18 testified as follows:  
19 EXAMINATION BY  
20 MR. MORRIS:  
21 Q. Good morning, Mr. Henderson.  
22 A. Good morning.  
23 Q. My name is John Morris, I'm an  
24 attorney at Pachulski Stang Ziehl & Jones and  
25 we're counsel for SPGK.

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1 A. Henderson  
2 A. Thank you.  
3 Q. And we're here today for your  
4 deposition. Do you understand that?  
5 A. Yes.  
6 Q. Have you ever been deposed before?  
7 A. No.  
8 Q. Okay.  
9 A. I've participated in hundreds of  
10 depositions as counsel, if that helps.  
11 Q. But you've never served as a  
12 witness, is that right?  
13 A. No.  
14 Q. Did any of those hundreds of  
15 depositions that you've participated in take  
16 place in the United States?  
17 A. I've attended depositions in the  
18 United States.  
19 Q. Okay. Some really simple ground  
20 rules, I am going to ask a series of  
21 questions, it's very important that you allow  
22 me to finish my question before you begin to  
23 answer. Do you understand that?  
24 A. Yes.  
25 Q. It's also very important that I

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1 A. Henderson  
2 allow you to finish your answer before I begin  
3 the next question, and if I fail to do that,  
4 and it might happen, will you let me know?  
5 A. Yes.  
6 Q. And if I ask a question that you  
7 don't understand, will you let me know that,  
8 too?  
9 A. Yes.  
10 Q. If you want to break at any time,  
11 just tell me and I'll be happy to accommodate  
12 you as long as a question is not pending.  
13 Okay?  
14 A. Thank you.  
15 Q. And I think you're familiar with --  
16 I assume you're familiar based on those  
17 hundreds of depositions that from time to time  
18 your lawyer might lodge objections to my  
19 questions. Are you familiar with that  
20 process?  
21 A. Yes.  
22 Q. But that unless he specifically  
23 directs you not to answer, I'll either have an  
24 opportunity to rephrase the question or I'll  
25 just ask you to answer the question. Is that

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1 A. Henderson  
2 fair?  
3 A. Yes.  
4 Q. Okay. Did you do anything to  
5 prepare for today's deposition?  
6 A. I read over the declaration of  
7 Ms. Pearson. That was this morning. On prior  
8 days I've done things to prepare as well.  
9 Q. How many prior days did you spend  
10 preparing for today's deposition?  
11 A. I did a fair bit of reading in the  
12 Cayman Islands a couple of weeks ago. That  
13 would be probably a day or so. And I met with  
14 counsel yesterday for preparation.  
15 Q. And the things that you read, did  
16 you read them for the purposes of refreshing  
17 your recollection as to the matters that are  
18 at issue here?  
19 A. Yes, that would be one of the  
20 purposes.  
21 Q. Okay. Can you describe for me  
22 everything you recall reading in connection  
23 with the preparation for today's deposition?  
24 A. I recall reading my declaration,  
25 Ms. Pearson's declaration. I recall reading



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1 A. Henderson  
2 some of Ms. Pearson's deposition. At one  
3 time, I suppose this would be quite early on,  
4 I read the motion, and Mr. Robinson's evidence  
5 or declaration. And Mr. Cowan's.  
6 Q. Do you recall that in your  
7 declaration --  
8 MR. MORRIS: Withdrawn.  
9 Q. You signed a declaration in support  
10 of the liquidators in this case, correct?  
11 A. Correct.  
12 Q. And do you recall that in that  
13 declaration you identified certain documents  
14 that you had reviewed --  
15 A. Correct.  
16 Q. -- in order to form your opinions?  
17 A. Yes, I do recall that.  
18 Q. In preparing for today's deposition  
19 do you recall reviewing any document that  
20 wasn't identified in your declaration?  
21 A. I looked at the 1862 Joint Stock  
22 Companies Act in the U.K. to refresh my memory  
23 on a bit of history.  
24 I looked at a couple of 19th  
25 century chancery court cases for the same

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1 A. Henderson  
2 purpose.  
3 Q. Anything else that you can recall?  
4 A. There was that Singapore judgment.  
5 I read part of it.  
6 Q. Is the Singapore judgment relevant  
7 to the opinions that are set forth in your  
8 declaration?  
9 A. No.  
10 Q. I appreciate that. Because I think  
11 I saw it identified, but I didn't see any  
12 substantive opinion expressed with respect --  
13 A. It was given to me to be read and I  
14 read it.  
15 Q. Okay. You met with counsel to  
16 prepare for today's deposition, do I have that  
17 right?  
18 A. Correct. Yes.  
19 Q. And was that yesterday?  
20 A. Yes.  
21 Q. Was it just attorneys from  
22 Pillsbury?  
23 A. No. Attorneys from Campbells as  
24 well.  
25 Q. Okay. And did anybody else

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1 A. Henderson  
2 participate in the meeting?  
3 A. No. There were two attorneys from  
4 Pillsbury, two from Campbells, and myself.  
5 Q. And how long did you meet?  
6 A. From 10 a.m. until roughly 3 p.m.  
7 or 3:30.  
8 Q. I do want to just thank you on the  
9 record for your willingness to come to  
10 New York.  
11 A. It's always a pleasure to come to  
12 New York.  
13 Q. If there's one thing that I hope  
14 that the parties can agree on, it's that  
15 saving costs is helpful and you're the reason  
16 that we're able to do that. So thank you.  
17 A. Okay.  
18 MR. McDONALD: John, before we go  
19 on, if we could just put on the record  
20 that we're agreeing that all objections  
21 are preserved?  
22 MR. MORRIS: Yes.  
23 MR. McDONALD: All right? Do you  
24 want the transcript read --  
25 MR. MORRIS: Except as to form.

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1 A. Henderson  
2 MR. McDONALD: Right. Except as to  
3 form.  
4 MR. MORRIS: Yes. We'll do the  
5 same process that we did.  
6 MR. McDONALD: The same as we had  
7 before?  
8 MR. MORRIS: Yes.  
9 MR. McDONALD: Okay. Thank you.  
10 Q. You've been engaged by Ascentra  
11 Holdings to provide expert testimony in  
12 Ascentra's Chapter 15 proceeding in New York,  
13 is that right?  
14 A. That is correct.  
15 Q. Do you recall when you were first  
16 engaged?  
17 A. Not really. It might -- it must  
18 have been in August sometime.  
19 Q. Sometime over the summer, is that  
20 fair?  
21 A. Probably.  
22 Q. And what were the circumstances  
23 that led to your engagement by Ascentra?  
24 A. I don't know. Ascentra would have  
25 to ask that -- answer that.

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1 A. Henderson  
2 Q. Did somebody call you or send you  
3 an email?  
4 A. Oh, somebody sent me an email I  
5 think. I think it was an email rather than a  
6 phone call.  
7 Q. And do you recall who first  
8 approached you?  
9 A. Somebody from Campbells.  
10 Q. But you --  
11 A. I'm sorry. I don't recall the  
12 name. I probably have it in my file  
13 somewhere. But I don't recall the name.  
14 Q. Did you subsequently speak with  
15 somebody about the potential engagement?  
16 A. Yes.  
17 Q. Do you recall who you spoke with?  
18 A. With Ms. Lillington, who is here.  
19 Mr. Cowan, who is here. There may have been  
20 someone else as well.  
21 Q. And who is Ms. Lillington?  
22 A. She works at Campbells.  
23 Q. And how about Mr. Cowan?  
24 A. He works at Campbells.  
25 Q. Do you recall what they told you in

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1 A. Henderson  
2 your initial conversation about why they were  
3 calling you and what they were seeking?  
4 A. I don't really. I mean, it would  
5 have been they want evidence given in  
6 connection with a winding up proceeding, and I  
7 would have quoted them my hourly rate. They  
8 would have provided me with a list of  
9 potential conflicts so that I can do a  
10 conflicts search.  
11 Q. Are these things that you recall  
12 happening or things that you just assume  
13 happened because --  
14 A. I think because I don't recall  
15 really.  
16 (Reporter requests clarification.)  
17 Q. Did there come a time when you were  
18 given a specific assignment?  
19 A. Yes.  
20 Q. And do you recall when that was?  
21 A. No.  
22 Q. Do you recall what the assignment  
23 was?  
24 A. Yes. I do.  
25 Q. Can you please tell me everything

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1 A. Henderson  
2 you recall about the assignment you were  
3 given?  
4 A. I was --  
5 MR. McDONALD: To the extent you  
6 discussed it with Cowan's [sic] or us  
7 after your engagement, I counsel that  
8 it's privileged. Okay?  
9 THE WITNESS: Yes.  
10 A. The initial assignment was fairly  
11 vague, as I recall. It was to give evidence  
12 on Cayman Islands law involving a winding up  
13 proceeding with a view to supporting a  
14 recognition order in New York. I think that  
15 would be the summary.  
16 Q. And did that initial vague  
17 assignment take on more specificity later in  
18 time?  
19 A. Yes.  
20 Q. And in what way did that vague  
21 assignment become more specific?  
22 A. Well, it became clear that  
23 Ms. Pearson had submitted a declaration and in  
24 fact had been deposed as well, and I was to  
25 respond to that.

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1 A. Henderson  
2 Q. Did you help the attorneys  
3 representing the liquidators prepare for  
4 Ms. Pearson's deposition?  
5 A. No.  
6 Q. At the time you were engaged  
7 Ms. Pearson had already submitted a  
8 declaration in support of SPGK's motions, do  
9 you understand that?  
10 A. I assume that to be true. I only  
11 saw it sometime later. But ...  
12 Q. Is it fair to say that you were  
13 given two assignments, one was to opine on  
14 Cayman Islands winding up law and the other  
15 was to review and opine on Ms. Pearson's  
16 declaration and opinions?  
17 A. No. It was one assignment  
18 described in general terms at first and more  
19 specific terms later, I think.  
20 Q. Okay. So the general terms in the  
21 beginning were that you were asked to opine on  
22 Cayman Islands law on winding up in order to  
23 support the recognition proceeding --  
24 A. Yes.  
25 Q. -- in the United States, do I have

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1 A. Henderson  
2 that right?  
3 A. A general -- that was a general  
4 description.  
5 MR. McDONALD: Let him finish the  
6 question. Pause a little bit, okay?  
7 THE WITNESS: Okay.  
8 Q. And then -- it is a little tricky  
9 sitting in that seat.  
10 And then you were asked to expand  
11 on that further to deal with Ms. Pearson, is  
12 that fair? Or did the assignment change in  
13 other ways?  
14 A. No. It wasn't a question of  
15 expanding on it. There was a very general  
16 description given of the field of expertise  
17 that was required, which is typical in these  
18 assignments. And then after the conflict  
19 search is done and the hourly rate is agreed  
20 to and that sort of thing, then the specifics  
21 were given to me.  
22 MR. MORRIS: Let's mark as exhibit  
23 1 your declaration. And I do know that  
24 your declaration had some attachments,  
25 but I've broken them out into pieces.

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1 A. Henderson  
2 So for the moment I'm just going to hand  
3 to you your declaration. Okay?  
4 THE WITNESS: Sure.  
5 (Henderson Exhibit 1, Declaration  
6 of Mr. Henderson was marked for  
7 identification).  
8 Q. This is your declaration, sir, is  
9 that right?  
10 A. Yes.  
11 Q. And you signed it on the last page,  
12 do I have that correct?  
13 A. Yes.  
14 Q. Did you review it before signing  
15 it?  
16 A. Yes.  
17 Q. And did you authorize counsel to  
18 file this in New York on your behalf?  
19 A. That was implied.  
20 Q. Okay. Who wrote this document?  
21 A. I did.  
22 Q. And how long did it take you to  
23 write?  
24 A. Several hours. I don't know how  
25 long exactly.

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1 A. Henderson  
2 Q. Did you go through multiple drafts  
3 or is it just one draft?  
4 A. No. There would be multiple  
5 drafts.  
6 Q. Do you recall how many drafts you  
7 wrote?  
8 A. Probably three or four. It would  
9 be one of those two. Three or four.  
10 Q. Did you share any draft with  
11 anybody at any time?  
12 A. Oh, yes. With counsel.  
13 Q. Did counsel provide to you any kind  
14 of outline that they wanted you to follow in  
15 preparing the declaration?  
16 A. No.  
17 Q. Did counsel provide any comments to  
18 any draft that you prepared?  
19 A. Yes.  
20 Q. Do you recall any comments that any  
21 lawyer, or anybody, provided to any draft of  
22 your declaration?  
23 A. I don't recall any specific  
24 comments.  
25 Q. Did they provide written comments

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1 A. Henderson  
2 to you?  
3 A. Yes. They would have provided  
4 comments embedded in a Microsoft Word version  
5 of the document.  
6 Q. But you don't remember any of those  
7 comments?  
8 A. No.  
9 MR. McDONALD: I am going to  
10 object. That's privileged.  
11 MR. MORRIS: I don't agree with  
12 that, but are you directing him not to  
13 answer?  
14 MR. McDONALD: I am directing him  
15 not to answer that question.  
16 MR. MORRIS: Okay.  
17 Q. Did you have all of the information  
18 that you believed you needed in order to  
19 render your opinions at the time that you  
20 prepared this declaration?  
21 A. Yes.  
22 Q. Is there any information that you  
23 can think of that was relevant to your  
24 analysis as set forth in the declaration that  
25 you were unable to obtain?

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1 A. Henderson  
2 MR. McDONALD: Objection to form.  
3 THE WITNESS: I'm sorry, I  
4 didn't --  
5 MR. McDONALD: I just objected to  
6 form. You can answer.  
7 THE WITNESS: I see.  
8 A. The answer would be no.  
9 Q. And if we go to paragraph 11, as I  
10 referred to earlier.  
11 A. Yes.  
12 Q. That's the list of documents and  
13 materials that you reviewed to understand the  
14 context in which your opinions were being  
15 provided, is that correct?  
16 A. Yes.  
17 Q. And how did you obtain this  
18 information?  
19 A. It was given to me by counsel.  
20 Q. And did counsel identify the  
21 documents that are listed in paragraph 11?  
22 A. Did counsel identify them?  
23 Q. Yeah. I mean you didn't --  
24 A. No. The counsel just sent them to  
25 me by email.

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1 A. Henderson  
2 Q. Okay. So they selected the  
3 documents that you reviewed, is that fair?  
4 A. Correct.  
5 Q. I may have asked you this earlier.  
6 If I did, I apologize.  
7 In formulating your opinions did  
8 you consider any information that's not  
9 disclosed in paragraph 11?  
10 A. Well, I remember, as I say, going  
11 and taking a look at the 1862 Joint Stock  
12 Companies Act in the U.K. and looking at two  
13 or three decisions from that era in the U.K.  
14 chancery court.  
15 Q. Anything else you can recall?  
16 A. No. Nothing else that I can  
17 recall.  
18 Q. Okay. Is there anything in your --  
19 MR. MORRIS: Withdrawn.  
20 Q. You reviewed this declaration as  
21 part of your preparation for today's  
22 deposition, correct?  
23 A. Yes.  
24 Q. Okay. Is there anything in your  
25 declaration that you now believe is

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1 A. Henderson  
2 inaccurate?  
3 A. No.  
4 Q. Is there anything in your  
5 declaration that you now believe is  
6 incomplete?  
7 A. No.  
8 Q. Is there anything in your  
9 declaration that you now believe needs to be  
10 updated or modified in any way to ensure that  
11 it fully and accurately reflects all of your  
12 opinions?  
13 A. No.  
14 Q. Okay. You attached two documents  
15 to your declaration, is that right?  
16 A. Yes.  
17 Q. The first was the Cayman Islands  
18 Companies Act, correct?  
19 A. Yes.  
20 Q. And Part V of the Companies Act  
21 provides rules concerning the winding up of  
22 Cayman Islands entities, is that fair?  
23 MR. McDONALD: Object to the form.  
24 A. Yes.  
25 Q. Is that fair, sir?

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1 A. Henderson  
2 A. Yes.  
3 MR. MORRIS: Okay. I am going to  
4 mark as exhibit 2 the copies that I have  
5 of the Companies Act.  
6 (Henderson Exhibit 2, Companies Act  
7 was marked for identification).  
8 Q. And I will represent to you if  
9 you'll look at the top of the document there's  
10 a bunch of numbers and statements. This  
11 document was attached to your declaration, do  
12 I have that right?  
13 A. Yes.  
14 Q. Why did you attach this document to  
15 your declaration?  
16 A. Counsel wanted me to.  
17 Q. And the other document that you  
18 attached to your declaration is known as the  
19 Companies Winding Up Rules, is that right?  
20 A. Yes.  
21 MR. MORRIS: Let's mark that as  
22 exhibit 3.  
23 (Henderson Exhibit 3, Companies  
24 Winding Up Rules was marked for  
25 identification).



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1 A. Henderson  
2 Q. And did you also attach that  
3 document to your declaration at the request of  
4 counsel?  
5 A. Yes.  
6 Q. Taken together, do Part V of the  
7 Companies Act and the Winding Up Rules taken  
8 together, does that constitute the Cayman  
9 Island law that relates to the winding up of  
10 companies in the Cayman Islands?  
11 A. Not entirely.  
12 Q. Can you describe for me what other  
13 rules apply to the winding up of Cayman  
14 Islands companies that are not contained in  
15 those two documents?  
16 MR. McDONALD: Objection to form.  
17 A. The régime manifested in a couple  
18 of hundred years of decisions in the U.K.  
19 emanating from the court of chancery.  
20 Q. I appreciate that. And is it fair  
21 to say that you didn't cite to any of those  
22 decisions in your declaration?  
23 A. That's correct.  
24 Q. Okay. So there's no decision that  
25 you are specifically relying on in order to

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1 A. Henderson  
2 formulate your opinions?  
3 A. No specific decision, correct.  
4 Q. Okay. Just to try to make this a  
5 little easy, can we refer to the Part V of the  
6 Companies Act and the Winding Up Rules  
7 together as the winding up laws of the Cayman  
8 Islands?  
9 A. Yes.  
10 Q. Okay. Do you know why the Winding  
11 Up Rules are broken out into two pieces; one  
12 that's Part V of the Companies Act and one  
13 that are the Winding Up Rules?  
14 A. I don't think I do know why, no.  
15 Q. Is there a custom or practice in  
16 which the two sets of rules are used in the  
17 Cayman Islands?  
18 A. There's a trend in the Cayman  
19 Islands, to which I largely object, that  
20 important provisions in the law are relegated  
21 to rules rather than set out in statutes.  
22 Q. Is Part V of the Companies Act, is  
23 that a statute?  
24 A. Yes.  
25 Q. And who passed that statute?

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1 A. Henderson  
2 A. The Parliament of the Cayman  
3 Islands.  
4 Q. And who adopted the Winding Up  
5 Rules?  
6 A. The Rules Committee in the first  
7 instance would have adopted them or perhaps  
8 more technically recommended them, and then  
9 they would have been adopted either by the  
10 governor or by the cabinet.  
11 Q. Do you know who adopted the  
12 document we have marked as exhibit 3, the  
13 Companies Winding Up Rules?  
14 A. I don't. I would have to look it  
15 up.  
16 Q. Do you know when they were adopted?  
17 A. I would have to look it up.  
18 Q. Do you know when the Companies Act  
19 was enacted?  
20 A. Not precisely, no. I only came to  
21 the Cayman Islands in the year 2000.  
22 Q. Was Part V of the Companies Act --  
23 had it been adopted at the time that you got  
24 to the Cayman Islands?  
25 A. Yes.

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1 A. Henderson  
2 Q. And how about the Companies Winding  
3 Up Rules, had they been adopted by the time  
4 you got to the Cayman Islands?  
5 A. I think so, but I'm not sure.  
6 Q. You referred to a Rules Committee.  
7 What Rules Committee are you referring to?  
8 A. It's a committee appointed by the  
9 attorney general and the chief justice to  
10 create rules for court proceedings. They  
11 draft the rules. They don't necessarily give  
12 them legal effect themselves. The rules may  
13 require promulgation by the governor or by the  
14 cabinet.  
15 Q. And are the company Winding Up  
16 Rules in exhibit 3, are those binding on  
17 parties to winding up proceedings in the  
18 Cayman Islands?  
19 A. They're binding.  
20 Q. If the take Part V of the Companies  
21 Act and the Winding Up Rules, is there one set  
22 of rules that are either more important or  
23 that take precedent over the other?  
24 MR. McDONALD: Objection to form.  
25 A. Yes, there is.

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<p style="text-align: right;">Page 29</p> <p>1 A. Henderson</p> <p>2 Q. Can you tell me how that works?</p> <p>3 A. Part V of the Companies Act is</p> <p>4 primary legislation and takes precedence over</p> <p>5 the rule-making power. The Companies Winding</p> <p>6 Up Rules are subordinated legislation made</p> <p>7 pursuant to a power that I presume is found in</p> <p>8 the Companies Act. The rule making cannot</p> <p>9 extend beyond the jurisdiction granted for</p> <p>10 that purpose by the Companies Act.</p> <p>11 Q. Are you aware of any aspect of the</p> <p>12 Companies Winding Up Rules that conflicts with</p> <p>13 Part V of the Companies Act?</p> <p>14 A. No, I haven't directed my mind to</p> <p>15 it. But I'm not aware of any.</p> <p>16 Q. Do parties to a winding up</p> <p>17 proceeding in the Cayman Islands that's under</p> <p>18 judicial supervision, they're obligated to</p> <p>19 follow both the Companies Act and the Winding</p> <p>20 Up Rules, right?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. We've used the phrase</p> <p>23 "winding up," right?</p> <p>24 A. Yes.</p> <p>25 Q. And I think the phrase</p>	<p style="text-align: right;">Page 31</p> <p>1 A. Henderson</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. What does that mean?</p> <p>5 A. I'm sorry?</p> <p>6 Q. What does that mean?</p> <p>7 A. It means what I have said after the</p> <p>8 semi-colon, there is no statutory provision or</p> <p>9 common law rule that authorizes a legal</p> <p>10 proceeding exclusively for the purpose of</p> <p>11 addressing the consequences of insolvency.</p> <p>12 Insolvency is simply a justification or a</p> <p>13 ground for winding up the company.</p> <p>14 Q. And is it fair to contrast that</p> <p>15 with Chapter 11 in the United States as a</p> <p>16 general matter?</p> <p>17 MR. McDONALD: Objection to form.</p> <p>18 A. I don't have enough knowledge of</p> <p>19 Chapter 11 to contrast anything with it.</p> <p>20 Q. Okay. There's no proceeding in the</p> <p>21 Cayman Islands that would allow a company to</p> <p>22 reorganize, is that fair?</p> <p>23 A. No, we have -- we now have</p> <p>24 provisions that allow for corporate</p> <p>25 reorganization.</p>
<p style="text-align: right;">Page 30</p> <p>1 A. Henderson</p> <p>2 "liquidation" is also used in your declaration</p> <p>3 from time to time, is that right?</p> <p>4 A. Yes. Certainly. Yes.</p> <p>5 Q. In your opinion is there any</p> <p>6 substantive difference between a winding up</p> <p>7 proceeding and a liquidation?</p> <p>8 A. Not in practice. I suppose in</p> <p>9 theory you could have a company that has no</p> <p>10 assets and no liabilities. So you simply wind</p> <p>11 it up. There's no need to liquidate anything.</p> <p>12 In fact, I shouldn't say in theory. I think</p> <p>13 that happens fairly regularly.</p> <p>14 Q. I appreciate that. With that</p> <p>15 exception, are the terms in your opinion --</p> <p>16 A. Yes.</p> <p>17 Q. -- interchangeable?</p> <p>18 A. They're functionally equivalent.</p> <p>19 Q. Okay. Can you turn to paragraph 16</p> <p>20 of your declaration, please?</p> <p>21 A. Yes.</p> <p>22 Q. In paragraph 16 your first sentence</p> <p>23 says, quote, "strictly speaking there is no</p> <p>24 such thing as an insolvency proceeding in the</p> <p>25 Cayman Islands."</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Henderson</p> <p>2 Q. And are they set forth in Part V of</p> <p>3 the Companies Act?</p> <p>4 A. They're in the Companies Act. I</p> <p>5 don't think they're in Part V.</p> <p>6 Q. Okay.</p> <p>7 A. They're probably in Part IV.</p> <p>8 Q. So that concept of reorganization</p> <p>9 is unrelated to the concept of winding up in</p> <p>10 liquidation, is that fair?</p> <p>11 A. Yes.</p> <p>12 Q. Would you agree that a winding up</p> <p>13 or liquidation proceeding is a proceeding</p> <p>14 whereby a company undertakes a process with</p> <p>15 the express purpose of ending its corporate</p> <p>16 existence?</p> <p>17 A. Yes.</p> <p>18 Q. And that's what we've defined as</p> <p>19 the winding up laws are intended to do, is</p> <p>20 that fair?</p> <p>21 A. Yes.</p> <p>22 Q. And that's why in your opinion it</p> <p>23 doesn't matter if a company is solvent,</p> <p>24 insolvent or of doubtful insolvency, as long</p> <p>25 as the process is one that's undertaken for</p>

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1 A. Henderson  
2 the purpose of ending the corporate existence,  
3 then it's one that has to be undertaken  
4 pursuant to the winding up laws, is that fair?  
5 A. Yes, I think that's fair.  
6 Q. And in fact in paragraph 17 you  
7 specifically state that insolvency is just one  
8 circumstance that could lead to a winding up  
9 proceeding, right?  
10 A. Yes.  
11 Q. Quote, "Whatever the justification  
12 for a winding up order there's just one  
13 available proceeding, an action commenced by  
14 petition in the Grand Court."  
15 Have I read that correctly?  
16 A. Yes.  
17 Q. And is it fair to say that's the  
18 heart of your opinion?  
19 A. Yes.  
20 Q. And that opinion is really the  
21 foundation for your opinion back in paragraph  
22 14, that the Cayman proceeding actually does  
23 satisfy the elements that you've identified in  
24 paragraph 14, right?  
25 A. I'm sorry. I don't understand --

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1 A. Henderson  
2 Q. Really bad question. Really bad  
3 question.  
4 I'm just taking you from 17 back to  
5 14. Paragraph 14 identifies three elements?  
6 A. Yes, it does.  
7 Q. Okay. And based on your opinions  
8 set forth in paragraph 17 as a general matter  
9 you believe that because the winding up  
10 régime, regardless of the cause of the winding  
11 up, results in the liquidation of the  
12 corporate entity, it therefore satisfies the  
13 three elements that are in paragraph 14, is  
14 that fair?  
15 MR. McDONALD: Objection to form.  
16 A. Well, if I understand the question,  
17 no. I mean, I've identified in paragraph 14  
18 what I understand to be the three live issues  
19 in this proceeding. All I'm doing in  
20 paragraph 14 is setting them out. I address  
21 them subsequently.  
22 My opinion on those three issues  
23 certainly depends heavily upon my  
24 understanding that there is just one sort of  
25 proceeding, it's a winding up proceeding.

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1 A. Henderson  
2 Q. Because Ascentra's proceeding in  
3 the Cayman Islands is a winding up proceeding,  
4 it is therefore a collective proceeding in  
5 your opinion, is that right?  
6 A. Yes.  
7 Q. And because it is a winding up  
8 proceeding under the winding up laws it is a  
9 proceeding conducted under a law relating to  
10 insolvency or the adjustment of debt, is that  
11 right?  
12 A. Yes.  
13 Q. And because it's a proceeding in  
14 the Cayman Islands for the purpose of winding  
15 up Ascentra, it is also a Cayman proceeding  
16 for the purpose of reorganization or  
17 liquidation, correct?  
18 A. Yes.  
19 Q. So that one concept can really be  
20 used to satisfy all three elements --  
21 A. Yes.  
22 Q. -- in your opinion, is that fair?  
23 A. Yes. It grounds my opinion of the  
24 three elements.  
25 Q. Okay. And all of those opinions

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1 A. Henderson  
2 are unaffected by the reason for the winding  
3 up, is that fair?  
4 A. Well, the reason for the winding up  
5 certainly plays an important role, because it  
6 governs where the Court will put the weight  
7 when considering the opinions of the  
8 creditors, the shareholders and it governs  
9 other things as well, including standing to  
10 bring applications. So I'm not sure I could  
11 agree with what you've just asked me.  
12 Q. Whether a company is solvent,  
13 insolvent or of doubtful solvency, if they  
14 want to liquidate under court supervision in  
15 the Cayman Islands they must operate under the  
16 winding up laws, correct?  
17 A. Correct.  
18 Q. Okay. And once you're winding up  
19 under the winding up laws in the Cayman  
20 Islands, you necessarily satisfy each of the  
21 three elements in paragraph 14, right?  
22 A. I think so, yes.  
23 Q. Okay. Let's go to paragraph 24.  
24 A. Yes.  
25 Q. And here's where you address the

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<p style="text-align: right;">Page 37</p> <p>1 A. Henderson</p> <p>2 question of whether the Cayman proceeding is a</p> <p>3 collective proceeding, right?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. And you don't cite to any</p> <p>6 law to support any of the opinions in</p> <p>7 paragraphs 24 or 25, right?</p> <p>8 A. No.</p> <p>9 Q. And it's your opinion that</p> <p>10 regardless of the reason for the winding up,</p> <p>11 and by that I mean solvent, insolvent or of</p> <p>12 doubtful insolvency, regardless of the reason</p> <p>13 you believe it's a collective proceeding</p> <p>14 because creditors and shareholders both have a</p> <p>15 stake in the outcome, is that fair?</p> <p>16 A. Yes.</p> <p>17 Q. You do acknowledge that creditors</p> <p>18 have no right to bring on sanctions,</p> <p>19 applications or to sit on liquidation</p> <p>20 committees of a solvent entity, correct?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. But you do express the</p> <p>23 opinion that the Cayman proceeding is a</p> <p>24 collective proceeding because among other</p> <p>25 things a Cayman judge has a duty to listen to</p>	<p style="text-align: right;">Page 39</p> <p>1 A. Henderson</p> <p>2 the Court as part of the --</p> <p>3 MR. MORRIS: Withdrawn.</p> <p>4 Q. Would it be relevant to your</p> <p>5 opinions --</p> <p>6 A. Ah.</p> <p>7 Q. -- if a creditor lodged a complaint</p> <p>8 with the Court in the Ascentra winding up</p> <p>9 proceeding?</p> <p>10 A. No.</p> <p>11 Q. Okay. And is that why you didn't</p> <p>12 ask anybody?</p> <p>13 A. Yes.</p> <p>14 Q. Great.</p> <p>15 In the last sentence of paragraph</p> <p>16 25 you state, quote, "Put another way,</p> <p>17 although a creditor has no right to be heard,</p> <p>18 the Court has a discretion to permit it as a</p> <p>19 necessary adjunct of the supervisory's</p> <p>20 function and the discretion will ordinarily be</p> <p>21 exercised in the creditor's favor."</p> <p>22 Have I read that fairly?</p> <p>23 A. Correct.</p> <p>24 Q. Are you aware of any part of the</p> <p>25 winding up laws that supports that opinion or</p>
<p style="text-align: right;">Page 38</p> <p>1 A. Henderson</p> <p>2 any creditor who complains, is that right?</p> <p>3 A. Yes. Because of the supervisory</p> <p>4 role played by the Court.</p> <p>5 Q. Is there any part of the winding up</p> <p>6 laws that you can cite me to for that</p> <p>7 proposition?</p> <p>8 A. Not -- you don't find it set out</p> <p>9 expressly in the Companies Act and the Rules,</p> <p>10 as I recall. Although I could be wrong. But</p> <p>11 certainly there's many, many decisions in the</p> <p>12 U.K. that refer to it.</p> <p>13 Q. Okay. Dealing with the Ascentra</p> <p>14 case itself, are you aware of any complaint</p> <p>15 that any creditor has brought to the court's</p> <p>16 attention?</p> <p>17 A. No.</p> <p>18 MR. McDONALD: Objection to form.</p> <p>19 Q. Did you ever ask anybody whether</p> <p>20 any creditor had any -- had ever complained in</p> <p>21 the context of the Ascentra winding up</p> <p>22 proceeding in the Cayman Islands?</p> <p>23 A. No.</p> <p>24 Q. Would it be relevant to you whether</p> <p>25 or not a creditor ever lodged a complaint with</p>	<p style="text-align: right;">Page 40</p> <p>1 A. Henderson</p> <p>2 observation?</p> <p>3 A. There was nothing in the Companies</p> <p>4 Act or the Winding Up Rules that expressly</p> <p>5 provides for it. But the supervisory function</p> <p>6 cannot be carried out correctly and fully</p> <p>7 without the Court paying attention to all</p> <p>8 relevant information from whatever source.</p> <p>9 Q. Do you know if the Court in the</p> <p>10 Ascentra winding up proceedings has ever been</p> <p>11 called upon to exercise the discretion that</p> <p>12 you've described in the last sentence of</p> <p>13 paragraph 25?</p> <p>14 A. No.</p> <p>15 Q. Did you ask anybody whether the</p> <p>16 Cayman court ever exercised its discretion in</p> <p>17 the way you've described in the last sentence</p> <p>18 of paragraph 5?</p> <p>19 A. No.</p> <p>20 Q. And that's because that's</p> <p>21 irrelevant to your opinions, is that right?</p> <p>22 A. Yes. My opinion is a general one.</p> <p>23 Q. Yes. Thank you.</p> <p>24 Paragraph 26 sets forth your</p> <p>25 opinions as to why you believe the Cayman</p>



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1 A. Henderson  
2 proceeding authorized or conducted --  
3 MR. MORRIS: Withdrawn.  
4 Q. Paragraph 26 sets forth your  
5 opinions as to why the Cayman proceeding  
6 relates to insolvency with the adjustment of  
7 debt, do I have that right?  
8 MR. McDONALD: Object to the form.  
9 A. Yes.  
10 Q. Would you agree that the winding up  
11 laws as we've defined them are not laws of  
12 insolvency?  
13 A. I would not agree.  
14 Q. Well, I thought your opinion  
15 earlier stated that there is no law of  
16 insolvency in the Cayman Islands?  
17 A. I didn't say that.  
18 Q. I apologize. I don't mean to put  
19 words in your mouth.  
20 A. I said strictly speaking, there is  
21 no such thing as an insolvency proceeding.  
22 Q. Correct.  
23 A. Rather, there is a winding up  
24 proceeding, which may be launched on any one  
25 of a number of grounds and one of those

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1 A. Henderson  
2 grounds is insolvency.  
3 Q. If the grounds are solvency would  
4 you agree that it's not a proceeding relating  
5 to insolvency?  
6 MR. McDONALD: Object to the form.  
7 A. So solvency is not a ground for  
8 winding up. The ground is that the  
9 shareholders have resolved to wind up the  
10 company or that the company has reached its  
11 term limit as set out in the articles or  
12 perhaps some other ground.  
13 Q. So if shareholders agree to wind up  
14 a solvent company --  
15 A. Yes.  
16 Q. -- would you agree that it would do  
17 so under laws that do not relate to  
18 insolvency?  
19 MR. McDONALD: Objection to form.  
20 A. I don't -- when they do that they  
21 are doing so under the auspices of the  
22 Companies Act, and the Companies Act in Part V  
23 does relate to insolvency. The shareholders  
24 may not be relying on any particular provision  
25 aimed at insolvent entities. But they are

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1 A. Henderson  
2 working under or operating under a statute  
3 that governs insolvency.  
4 Q. Can you identify any provision of  
5 Part V of the Companies Act that pertains to  
6 insolvent entities that a solvent entity in a  
7 winding up proceeding would be obligated to  
8 follow?  
9 A. Well, I suppose section 92 itself,  
10 which provides the jurisdiction to wind up the  
11 Court. That section provides for a winding up  
12 proceeding in the case of entities that are  
13 alleged to be insolvent and also in the case  
14 of entities where the company has passed a  
15 special resolution.  
16 Q. But isn't it true that only the  
17 portion of section 92 relating to the passage  
18 of a special resolution would apply to a  
19 company that's winding up that is also  
20 solvent?  
21 A. That's true.  
22 Q. Okay. So I am going to ask you  
23 again: Can you identify any provision in  
24 Part V of the Companies Act that pertains to  
25 insolvent entities, that a solvent liquidation

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1 A. Henderson  
2 would be obligated to follow?  
3 A. Well, I mean -- and I hope I'm  
4 understanding your question correctly, but  
5 under section 94 sub 1: An application to the  
6 Court for the winding up of a company shall be  
7 by petition. That applies to both solvent and  
8 insolvent entities.  
9 Q. I appreciate that. Thank you so  
10 much.  
11 But you would agree with me that  
12 there were certain provisions in Part V that  
13 only pertain to insolvent entities, correct?  
14 A. Yes, I do.  
15 Q. Okay. And with respect to that set  
16 of provisions, are there any that a solvent  
17 entity in a winding up proceeding would also  
18 be required to follow?  
19 A. Perhaps not. But I would have to  
20 go through the entire part of Part V to be  
21 sure about it.  
22 Q. Okay.  
23 A. But most likely not.  
24 Q. Is there a process for the  
25 adjustment of debt that's applicable to a



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1 A. Henderson  
2 winding up proceeding for its solvent entity?  
3 A. There's nothing specific set out in  
4 the Companies Act or the Winding Up Rules.  
5 Q. And is it fair to say that --  
6 MR. MORRIS: Withdrawn.  
7 Q. Would you agree that if you are a  
8 solvent entity in a winding up proceeding in  
9 the Cayman Islands, creditors are required to  
10 be paid in the ordinary course of business?  
11 MR. McDONALD: Object to the form.  
12 A. Creditors are required to be paid  
13 in the so-called ordinary course. The only  
14 comment I would make is that the company  
15 that's being wound up is not in the ordinary  
16 course of business. But that's something the  
17 Rules Committee should take into account.  
18 Q. But a company in, even a solvent  
19 company --  
20 MR. MORRIS: Withdrawn.  
21 Q. Any company that's winding up is  
22 going to take time --  
23 MR. MORRIS: Withdrawn.  
24 Q. Is it fair to say that except for  
25 the circumstance that you mentioned earlier,

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1 A. Henderson  
2 where a company has no assets and no  
3 liabilities, we'll call that a shell company,  
4 is that fair?  
5 A. Yes.  
6 Q. Except for shell companies --  
7 A. Call it a Cayman Islands company.  
8 Q. Except for that type of company,  
9 any company, whether it's solvent or insolvent  
10 is going to have to go through a process to  
11 complete the winding up, right?  
12 A. Yes.  
13 Q. And that process can be completed  
14 in days, weeks, months or years, right?  
15 A. Yes.  
16 Q. And during that process the company  
17 that's being wound up is going to have  
18 expenses, right?  
19 A. Yes.  
20 Q. And it's going to have to pay those  
21 expenses, right?  
22 A. Yes.  
23 Q. And it might even have expenses  
24 that it carried on its books that existed  
25 before the petition was filed, isn't that

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1 A. Henderson  
2 right?  
3 MR. McDONALD: Object to the form.  
4 A. Yes.  
5 Q. And a solvent entity is going to be  
6 required to pay its creditors, whether the  
7 debt arose before the petition was filed or  
8 after --  
9 A. Yes.  
10 Q. -- in the ordinary course of  
11 business, right?  
12 MR. McDONALD: Object to the form.  
13 A. It's required to pay those  
14 creditors, yes.  
15 Q. And that's why there is no  
16 adjustment of debt for a winding up proceeding  
17 involving a solvent debtor, fair?  
18 MR. McDONALD: Objection.  
19 A. It's fair with one proviso. The  
20 liquidators may from time to time determine  
21 that one of the claimed debts is not in fact  
22 owing.  
23 Q. I appreciate that.  
24 A. But aside from that, yes.  
25 Q. Yes. Putting aside disputed

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1 A. Henderson  
2 debts --  
3 A. Right.  
4 Q. Let me just finish the question.  
5 Putting aside disputed debts, the liquidators  
6 of a solvent entity undergoing a winding up  
7 will be required to pay their debts in the  
8 ordinary course regardless of whether those  
9 debts were accumulated before the petition was  
10 filed or after, correct?  
11 A. Correct.  
12 Q. Okay. And in paragraphs 27 and 28  
13 you address the third element that you  
14 identified at paragraph 14, and that is  
15 whether the Cayman proceeding is, one,  
16 conducted for the purpose of reorganization or  
17 liquidation, is that fair?  
18 A. Yes.  
19 Q. And you express the view that  
20 regardless of the cause of the winding up, and  
21 regardless of whether the entity is solvent or  
22 insolvent, the Cayman proceeding is one  
23 undertaken for the purpose of liquidation, is  
24 that fair?  
25 A. Yes.

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1 A. Henderson

2 Q. Okay. Is it fair to say that

3 paragraphs 24 through 28 set forth all of your

4 opinions as to why you believe the Ascentra

5 proceeding in the Cayman Islands satisfies the

6 three elements that are set forth in paragraph

7 14?

8 A. Yes, that's the entirety of my

9 opinion.

10 Q. Okay. Can we go to paragraph 20.

11 A. Yes.

12 Q. The first sentence expresses the

13 view that, quote, "Limitations have been

14 introduced for the purpose, in your opinion,

15 of ensuring efficient use of court time as

16 well as fairness between classes." And that's

17 the end of the quote. Have I read that

18 correctly?

19 A. Yes.

20 Q. Okay. What's the basis for that

21 opinion?

22 A. Discussions I've had with members

23 of the Rules Committee and other attorneys,

24 and my overall understanding of how winding up

25 proceedings are supposed to work.

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1 A. Henderson

2 Q. And what do you mean when you use

3 the phrase, "fairness between classes"?

4 A. Well, if for example, the entity is

5 thought to be solvent, then primarily it's the

6 interests of the shareholders that have to be

7 considered.

8 Q. And why is that?

9 A. Because they're the ones who have

10 the financial stake in the ultimate outcome.

11 Or perhaps I should say the largest or the

12 preeminent financial stake.

13 Q. If an entity is solvent, do

14 creditors have any economic interest other

15 than making sure the law is followed and they

16 receive payment in the ordinary course?

17 A. They have an economic interest, but

18 it's not other than that.

19 Q. Thank you.

20 A. That is their interest.

21 Q. The next sentence says, quote,

22 "Where the company appears to be solvent, the

23 right of the creditor class to address the

24 Court or to make important decisions is

25 curtailed."

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1 A. Henderson

2 A. Yes.

3 Q. You've got a footnote there,

4 footnote 7.

5 A. Mm-hmm.

6 Q. Is that footnote intended to

7 identify all of the ways in which you believe

8 the rights of a creditor class will be

9 curtailed in the case of a solvent entity?

10 A. No.

11 Q. Are there other ways in which the

12 creditors class's rights will be curtailed

13 that you didn't identify in footnote 7?

14 A. Yes. It's meant to be illustrative

15 only.

16 Q. Can you tell me what other rights

17 will be curtailed, what other rights of the

18 creditor class will be curtailed in a winding

19 up proceeding of a solvent entity?

20 MR. McDONALD: Is it beyond what

21 he's set forth in the footnote?

22 MR. MORRIS: Yes. Thank you for

23 the clarification.

24 MR. McDONALD: Thank you.

25 A. Without looking --

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1 A. Henderson

2 MR. MORRIS: In fact, let me

3 rephrase the question.

4 Q. Other than the rights that are

5 identified in footnote 7, can you identify any

6 other rights of the creditor class that in

7 your view are curtailed in the case of a

8 solvent entity?

9 A. Well, I don't recall by section

10 number exactly which rights I've referred to

11 there, but the emphasis that the Court will

12 place upon the views of the creditors is

13 significantly diminished. And that appears at

14 various times.

15 Q. Can you think of any right that the

16 creditor class has in the case of a winding up

17 proceeding involving a solvent debtor other

18 than the right to get paid in the ordinary

19 course?

20 MR. McDONALD: Objection to form.

21 A. There's one or two, I think, rights

22 that they are provided by the Winding Up

23 Rules. But I would have to go through the

24 rules to identify them.

25 Q. I do appreciate that. But off the

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1 A. Henderson  
2 top of your head you can't think of any, is  
3 that fair?  
4 A. No. As far as rights go, no.  
5 Q. Okay. You are currently an  
6 attorney with Dentons, do I have that right?  
7 A. Correct.  
8 Q. Have you ever been licensed to  
9 practice law in the United States?  
10 A. No.  
11 Q. Do you consider yourself an expert  
12 on any aspect of United States law?  
13 A. No.  
14 Q. So you are not offering any  
15 opinions as to any aspect of United States  
16 law, is that fair?  
17 A. Not at all.  
18 Q. Okay. Your opinions are limited to  
19 matters involving Cayman Islands law, is that  
20 right?  
21 A. That's correct.  
22 Q. Have you ever filed a declaration  
23 in any court in the United States?  
24 A. Oh, yes.  
25 Q. How many times have you done that?

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1 A. Henderson  
2 A. It would be probably less than ten.  
3 Seven, eight. Something like that.  
4 Q. Have any of them been in connection  
5 with a Chapter 15 case?  
6 A. Probably, but I don't remember for  
7 sure.  
8 Q. As you sit here today right now you  
9 can't identify an instance where you offered  
10 opinions concerning a Chapter 15 entity, is  
11 that right?  
12 A. I can't remember offhand, no.  
13 Q. And you mentioned the law firm  
14 Campbells earlier, do I have that right?  
15 A. Yes.  
16 Q. And do you have an understanding of  
17 who Campbells represents in connection with  
18 this proceeding?  
19 A. I understand they are on the  
20 Ascentra side of things.  
21 Q. Okay. And you've given expert  
22 evidence on other occasions for Campbell  
23 clients, correct?  
24 A. Yes.  
25 Q. How many times have you done that?

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1 A. Henderson  
2 A. Three, four, five maybe. I don't  
3 know.  
4 Q. Before you were contacted in  
5 connection with this case when was the last  
6 time --  
7 MR. MORRIS: Withdrawn.  
8 Q. Are you working with Campbells in  
9 any other case at this time?  
10 A. I was contacted a couple of days  
11 ago about a case, and I don't know if it was  
12 someone in connection with Campbells or not.  
13 I would have to ask counsel.  
14 Q. Is there a particular person or  
15 group at Campbells with whom you have a  
16 business relationship?  
17 MR. McDONALD: Objection to form.  
18 A. I don't think I would call it a  
19 business relationship. The litigation  
20 department at Campbells from time to time asks  
21 me to give expert evidence. And I've also  
22 acted as arbitrator in cases where Campbells  
23 was on one side of the matter.  
24 Q. Of the three or four times that you  
25 recall providing expert opinions on behalf of

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1 A. Henderson  
2 a Campbells client, when was the last time you  
3 did that before this case?  
4 A. I don't know. It would either be  
5 this year or last year. But I don't know.  
6 Q. Is that case complete or is it  
7 still going?  
8 A. Yes, all the other cases are  
9 complete. Yes.  
10 Q. Okay. You were a barrister in  
11 Canada for I guess about 25 years?  
12 A. Correct.  
13 Q. What type of matters did you work  
14 on during that time?  
15 A. Broad variety of litigation matters  
16 with an emphasis on prosecuting white-collar  
17 crime. I acted for the Securities and  
18 Exchange Commission in British Columbia as  
19 outside counsel. But it was a broad practice.  
20 Q. Did you have any matters during  
21 that 25-year period that had anything to do  
22 with Cayman Islands insolvency laws?  
23 A. No.  
24 Q. Anything during that 25-year period  
25 that had anything to do with the winding up

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1 A. Henderson  
2 laws as we've defined them?  
3 A. No.  
4 Q. Anything to do with the liquidation  
5 of companies --  
6 MR. MORRIS: Withdrawn.  
7 Q. During that 25-year period did you  
8 provide any advice to anybody in connection  
9 with the winding up or liquidation of a  
10 corporate entity?  
11 A. Probably not.  
12 Q. That's relevant -- I was going to  
13 say, that's relevant to your opinions today.  
14 A. Oh, that's relevant to my opinion?  
15 Q. Yeah, let's cut to the chase.  
16 A. No. No.  
17 Q. And then for about eight years  
18 thereafter from 1995 to 2003 you were a judge  
19 in Canada, do I have that right?  
20 A. That is correct.  
21 Q. And what court did you sit on?  
22 A. Supreme Court of British Columbia.  
23 Q. And what kind of cases did you hear  
24 as a member of the Supreme Court of British  
25 Columbia?

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1 A. Henderson  
2 A. Well, there was no formal  
3 specialization there, so I heard all types of  
4 cases.  
5 Q. Did any of the cases that you  
6 oversaw as a judge during that eight-year  
7 period involve the winding up laws as we've  
8 defined it?  
9 MR. McDONALD: Objection to the  
10 form.  
11 A. I don't recall ever having been the  
12 assigned judge on a, what I'll call a  
13 substantial winding up case in Canada. I may  
14 have heard motions in chambers from time to  
15 time. I probably did.  
16 Q. Is there anything about your time  
17 as a judge in Canada that you are relying upon  
18 in order to formulate your opinions in this  
19 case?  
20 A. No.  
21 Q. Okay. So is it fair to say that  
22 nothing you did in Canada from 1970 to 2003  
23 concerned the interpretation of any aspect of  
24 the winding up laws?  
25 A. That is fair.

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1 A. Henderson  
2 Q. And is it fair to say that nothing  
3 that you did during those 33 years helped form  
4 your opinions set forth in your declaration?  
5 A. That's fair, other than, you know,  
6 very broadly, 33 years of legal experience  
7 goes into it.  
8 Q. And then from 2003 to 2015 you sat  
9 as a judge on the Grand Court of the Cayman  
10 Islands, correct?  
11 A. Yes. So from 2000 to 2003 I sat as  
12 an acting judge on a number of occasions.  
13 Q. During your time as a judge in the  
14 Cayman Islands, did you ever oversee a winding  
15 up proceeding involving a solvent entity?  
16 A. Oh, I'm sure I did. Yes, I must  
17 have. I don't recall specifically. But a lot  
18 of solvent windings take place there.  
19 Q. And during that 12-year period, did  
20 you ever have occasion to exercise your  
21 discretion to permit a creditor to bring  
22 complaints to you?  
23 MR. MORRIS: Withdrawn.  
24 Q. During the 12-year period,  
25 focussing only on the cases of solvent

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1 A. Henderson  
2 entities in winding up proceedings, did you  
3 ever have occasion to adjudicate a creditor  
4 complaint?  
5 MR. McDONALD: Objection to form.  
6 A. I probably did. I would certainly  
7 have no reason to close my ears to the  
8 complaint, if it were made.  
9 Q. I appreciate that. I am just going  
10 to ask you if you can identify any case where  
11 you had to use your discretion in resolving a  
12 creditor complaint that was lodged in the case  
13 of a solvent entity that was winding up?  
14 A. I have no specific recollection of  
15 any such case.  
16 Q. During your time on the bench in  
17 Cayman Islands, did you ever rule on a  
18 sanction application that was filed by a  
19 creditor in a winding up proceeding involving  
20 a solvent entity?  
21 A. Well, I mean I don't remember, but  
22 probably not because a creditor has no  
23 standing to file a sanction application. A  
24 creditor could make a complaint informally by  
25 writing to the Court, something of that sort.



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1 A. Henderson  
2 But they can't file a formal application.  
3 Q. We'll talk about that more in a  
4 minute.  
5 Do you have any recollection of a  
6 creditor filing a complaint with the Court in  
7 connection with a winding up proceeding  
8 involving a solvent entity?  
9 A. No specific recollection, no.  
10 Q. And is it fair to say that during  
11 your time on the bench there was never an  
12 instance where a creditor sat on the  
13 liquidation committee of a solvent entity that  
14 was being wound up?  
15 A. I can't answer that because I  
16 wouldn't know who the members -- who all the  
17 members are of the liquidation committee at  
18 any given moment.  
19 Q. But, in fact, creditors are barred  
20 from sitting on the liquidation committee of a  
21 solvent entity that's underlying a winding-up,  
22 correct?  
23 A. That is correct.  
24 Q. And that's why really you can't  
25 recall, because it never happened that a

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1 A. Henderson  
2 creditor sat on a liquidation committee under  
3 those circumstances, fair?  
4 MR. McDONALD: Objection to the  
5 form.  
6 A. It's been my experience that  
7 liquidation committees are rather loosely  
8 organized. It's possible that a company that  
9 was first believed to be insolvent would have  
10 creditors on the liquidation committee, then  
11 the opinion changes and the company is  
12 expected to be solvent, and those creditors  
13 continue to attend meetings. I could see that  
14 happening. I don't have a recollection of it  
15 happening. I don't know that it's happened.  
16 But that's the kind of thing that could  
17 happen.  
18 Q. Well, but can it? Because under  
19 the winding up laws, if the company is  
20 solvent, creditors are barred from serving on  
21 liquidation committees, isn't that the law?  
22 MR. McDONALD: Object to the form.  
23 A. Yes. It's not supposed to happen.  
24 MR. MORRIS: Okay. If you would  
25 forgive me I would like to just take a

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1 A. Henderson  
2 short break?  
3 THE WITNESS: Certainly.  
4 THE COURT REPORTER: Ten minutes?  
5 MR. MORRIS: Yes, that's fine.  
6 (Recess from 10:26 a.m. to 10:41 a.m.)  
7 MR. MORRIS: Just as a reminder,  
8 you're still under oath.  
9 Q. Do you understand, Mr. Henderson,  
10 that Ascentra is an exempt Cayman Islands  
11 company, correct?  
12 A. Yes.  
13 Q. That is your understanding, that's  
14 in your declaration, right?  
15 A. Yeah, if I said that, then I  
16 understand it.  
17 Q. And you also understand that in  
18 2021 the shareholders of Ascentra resolved  
19 unanimously to place Ascentra in voluntary  
20 liquidation, correct?  
21 A. Yes.  
22 Q. And did you learn those facts from  
23 counsel?  
24 A. Yes.  
25 Q. Do you know who the shareholders of

Page 64

1 A. Henderson  
2 Ascentra are?  
3 A. No.  
4 Q. Do you know if a liquidation  
5 committee was formed in connection with the  
6 Ascentra bankruptcy?  
7 A. At the moment, no.  
8 MR. MORRIS: Withdrawn. It was a  
9 bad word.  
10 Q. Do you know if the liquidation  
11 committee was formed in connection with  
12 Ascentra's winding up proceeding?  
13 A. At the moment, no. I would have to  
14 perhaps look at Mr. Robinson's declaration to  
15 see what he said on the subject.  
16 MR. MORRIS: I am just going to  
17 mark as exhibit 4 a document that's  
18 entitled CWR Form 15.  
19 (Henderson Exhibit 4, CWR Form 15  
20 was marked for identification).  
21 Q. Are you generally familiar with CWR  
22 Form 15?  
23 A. Honestly, no. As a judge I'm not  
24 much concerned with forms. I'm sure I have  
25 seen it at one time or another, but it's not

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1 A. Henderson  
2 something I pay a lot of attention to in the  
3 ordinary course.  
4 Q. Okay. Have you seen this  
5 particular document before?  
6 A. It might have been attached to  
7 Mr. Robinson's declaration, in which case I  
8 would have seen it. I don't remember.  
9 Q. Do you see that it says  
10 specifically in the middle, that the company  
11 is solvent?  
12 A. Yes, I see that.  
13 Q. And that's a declaration that's  
14 made for purposes of section 110 --  
15 A. Yes.  
16 Q. -- of the Companies Act?  
17 A. Yes.  
18 Q. Looking at the three people who are  
19 identified here, have you ever communicated  
20 with any of those people?  
21 A. No.  
22 Q. Were you aware before this moment  
23 of the identity of the members of the  
24 liquidation committee?  
25 A. Probably not.

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1 A. Henderson  
2 Q. Is it fair to say that the  
3 composition of the liquidation committee is  
4 not relevant to your opinions?  
5 A. Yes, it's fair.  
6 Q. And you do understand that the  
7 shareholders of Ascentra appointed  
8 Mr. Robinson and Ivy Chua --  
9 A. Chua or Chua [pronouncing].  
10 MR. MORRIS: Chua?  
11 MR. McDONALD: Yes.  
12 Q. -- as Ascentra's liquidators?  
13 A. I understand that.  
14 Q. And can we just refer to them  
15 together as the JOLs?  
16 A. Yes.  
17 Q. And you've been engaged in this  
18 matter by the JOLs in fact, right?  
19 A. Yes.  
20 Q. Have you spoken with Ms. Chua about  
21 this matter?  
22 A. No.  
23 Q. Have you spoken with Mr. Robinson  
24 about this matter?  
25 A. No.

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1 A. Henderson  
2 Q. So they engaged you but you haven't  
3 communicated with them about this matter?  
4 A. That is correct.  
5 Q. Have you ever worked with  
6 Mr. Robinson before?  
7 A. I don't remember him, no.  
8 Q. Have you ever worked with Ivy Chua  
9 before?  
10 A. I don't think so, no.  
11 Q. Now, it's your understanding that  
12 the shareholders did not sign a declaration of  
13 solvency, correct?  
14 MR. McDONALD: Object to the form.  
15 A. Correct. Yes, yes.  
16 Q. That is your understanding?  
17 A. The directors did not sign a  
18 declaration of solvency.  
19 Q. I apologize. Let me rephrase the  
20 question.  
21 It's your understanding that  
22 Ascentra's directors never signed a  
23 declaration of solvency, is that correct?  
24 A. That is my understanding.  
25 Q. Okay. Do you know why they didn't

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1 A. Henderson  
2 sign?  
3 A. No.  
4 Q. Did you ever ask anybody?  
5 A. No.  
6 Q. Is the reason they didn't sign the  
7 solvency certificate relevant to your opinions  
8 in any way?  
9 A. No.  
10 Q. But because they didn't sign,  
11 Ascentra's liquidation process was brought  
12 under the supervision of the Grand Court of  
13 the Cayman Islands, is that fair?  
14 A. That is correct.  
15 Q. Okay. And within a week of the  
16 filing you understand that the JOLs filed a  
17 certificate stating that Ascentra should be  
18 treated as a solvent entity, correct?  
19 MR. McDONALD: Object to the form.  
20 A. Yes.  
21 Q. And that's set forth in paragraph  
22 12 of your declaration, right?  
23 A. Yes.  
24 MR. MORRIS: Let's mark as exhibit  
25 5 a document titled CWR Form Number 13.

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<p style="text-align: right;">Page 69</p> <p>1 A. Henderson</p> <p>2 (Henderson Exhibit 5, CWR Form</p> <p>3 Number 13 was marked for</p> <p>4 identification).</p> <p>5 Q. Have you seen this document before?</p> <p>6 A. As with the previous one, I -- I</p> <p>7 don't know if I've seen it or not. That</p> <p>8 probably depends upon whether it was attached</p> <p>9 to Mr. Robinson's declaration or not.</p> <p>10 Q. Well, you did mention --</p> <p>11 A. I was instructed that the JOLs made</p> <p>12 a determination of solvency. But whether I</p> <p>13 saw CWR Form 13 or not, I don't remember.</p> <p>14 Q. Is the fact that --</p> <p>15 MR. MORRIS: Withdrawn.</p> <p>16 Q. Have you ever been instructed that</p> <p>17 the JOLs have filed with the Cayman court any</p> <p>18 amendment or change to the determination that</p> <p>19 Ascentra is solvent?</p> <p>20 A. No.</p> <p>21 Q. Are your opinions affected or</p> <p>22 impacted in any way by the fact that the JOLs</p> <p>23 have determined that Ascentra is solvent?</p> <p>24 A. Well, yes, that's an important</p> <p>25 fact.</p>	<p style="text-align: right;">Page 71</p> <p>1 A. Henderson</p> <p>2 the court reporter got your prior</p> <p>3 question totally.</p> <p>4 MR. MORRIS: So let me ask it</p> <p>5 again.</p> <p>6 MR. McDONALD: It says "Well, their</p> <p>7 views or wishes as ..."</p> <p>8 MR. MORRIS: I appreciate that.</p> <p>9 Let me re-ask the question then.</p> <p>10 Q. Is there any provision in the</p> <p>11 winding up laws that would enable creditors as</p> <p>12 a class to have their views heard in the case</p> <p>13 of a solvent entity?</p> <p>14 A. I would have to go through the</p> <p>15 rules again section by section. I think there</p> <p>16 are one or two matters upon which their views</p> <p>17 are entitled to be heard. But I'm not -- I</p> <p>18 don't have them at hand.</p> <p>19 Q. Can you think about the subject</p> <p>20 matter in which their views might be heard,</p> <p>21 even if you can't identify the specific</p> <p>22 provision?</p> <p>23 A. I don't know. Would it be removal</p> <p>24 of the JOLs? That might be one.</p> <p>25 Q. Okay.</p>
<p style="text-align: right;">Page 70</p> <p>1 A. Henderson</p> <p>2 Q. And why is it an important fact?</p> <p>3 A. Because it elevates the concerns of</p> <p>4 the shareholders above those of the creditors.</p> <p>5 Q. And when you use the phrase</p> <p>6 "elevates," you mean that -- is it fair to say</p> <p>7 that you mean that the rights of creditors</p> <p>8 change or are different for a solvent entity</p> <p>9 than they are for an entity that is not</p> <p>10 solvent?</p> <p>11 A. Yes. The creditors have fewer</p> <p>12 rights. And in addition, their views or their</p> <p>13 wishes will be entitled to less weight.</p> <p>14 Q. Will their views or wishes as a</p> <p>15 class be entitled to any weight?</p> <p>16 A. It depends on the question, I</p> <p>17 suppose. It probably depends on the question.</p> <p>18 Q. Can you identify any provision in</p> <p>19 the winding up laws that would entitle a class</p> <p>20 of creditors to have weight given to their</p> <p>21 views?</p> <p>22 A. In a solvent winding up?</p> <p>23 Q. Yes, thank you.</p> <p>24 A. No, not offhand. No.</p> <p>25 MR. McDONALD: John, I don't think</p>	<p style="text-align: right;">Page 72</p> <p>1 A. Henderson</p> <p>2 A. I don't know.</p> <p>3 Q. Okay. Let's go -- if you could</p> <p>4 grab the rules, which I think are exhibit 3.</p> <p>5 A. Yes.</p> <p>6 Q. Let's spends some time with them.</p> <p>7 You're generally familiar with the Companies</p> <p>8 Winding Up Rules, correct?</p> <p>9 A. Generally, yes.</p> <p>10 Q. And if we can turn to Order 8. Is</p> <p>11 it fair to say that the Winding Up Rules are</p> <p>12 organized by what are described as orders and</p> <p>13 then within each order there are specified</p> <p>14 rules?</p> <p>15 A. Yes. That is the English style.</p> <p>16 Q. Okay. So can we go to Order 8,</p> <p>17 Rule Number 1?</p> <p>18 A. Yes.</p> <p>19 Q. Which is on page 59. That rule</p> <p>20 requires liquidators to determine at the</p> <p>21 outset of a winding up proceeding whether an</p> <p>22 entity is solvent, insolvent or of doubtful</p> <p>23 solvency, correct?</p> <p>24 A. Yes. Summarily determined.</p> <p>25 Q. And the reason that that</p>

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<p style="text-align: right;">Page 73</p> <p>1 A. Henderson</p> <p>2 determination is required is because there are</p> <p>3 consequences to the determination, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And the consequences of that</p> <p>6 determination are how the rights of the</p> <p>7 creditors and the shareholders will be</p> <p>8 impacted, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And is it fair to say that</p> <p>11 Order 8, Rule Number 1 also mandates that the</p> <p>12 liquidation -- that the liquidators'</p> <p>13 determination is final and binding on all</p> <p>14 creditors and contributories unless and until</p> <p>15 it's changed by the liquidator in accordance</p> <p>16 with the rules?</p> <p>17 MR. McDONALD: Objection to the</p> <p>18 form.</p> <p>19 A. Yes.</p> <p>20 Q. Do you have an opinion as to why</p> <p>21 Cayman law requires liquidators to determine</p> <p>22 at the outset whether a company should be</p> <p>23 determined to be solvent, insolvent or of</p> <p>24 doubtful solvency?</p> <p>25 A. Yes. Primarily for the reason you</p>	<p style="text-align: right;">Page 75</p> <p>1 A. Henderson</p> <p>2 But these rules would not be debated in</p> <p>3 Parliament.</p> <p>4 Q. But are you aware of any source</p> <p>5 that we could rely upon to discern the</p> <p>6 purpose, intent or policy behind the Winding</p> <p>7 Up Rules?</p> <p>8 A. Not really. I mean, you have to</p> <p>9 infer that from the rules themselves for the</p> <p>10 most part.</p> <p>11 Q. Okay.</p> <p>12 A. Obviously case law may touch upon</p> <p>13 them from time to time.</p> <p>14 Q. Okay. How about with respect to</p> <p>15 the Companies Act; is there any legislative</p> <p>16 history or any source that we could obtain</p> <p>17 that would shed light on the policy reasons</p> <p>18 behind the provisions of the Companies Act?</p> <p>19 A. Well, when that Act is amended, and</p> <p>20 indeed when it was first passed it would have</p> <p>21 been debated in Parliament. So there would be</p> <p>22 a record.</p> <p>23 Q. And is there a name for that</p> <p>24 record?</p> <p>25 A. Hansard.</p>
<p style="text-align: right;">Page 74</p> <p>1 A. Henderson</p> <p>2 gave. The determination will govern the</p> <p>3 rights of the creditor class and the</p> <p>4 shareholder class going forward.</p> <p>5 Q. And it's fair to say that those</p> <p>6 rights will be different depending on which</p> <p>7 determination is made?</p> <p>8 A. Yes.</p> <p>9 Q. Okay?</p> <p>10 A. In addition, certain procedures of</p> <p>11 the liquidators will differ.</p> <p>12 Q. I think you said that the Winding</p> <p>13 Up Rules are promulgated by a committee?</p> <p>14 A. The Rules Committee, yeah.</p> <p>15 Q. Is there anything --</p> <p>16 MR. MORRIS: Withdrawn.</p> <p>17 Q. Are you familiar with the phrase</p> <p>18 "legislative history"?</p> <p>19 A. Yes.</p> <p>20 Q. And the legislative history is, as</p> <p>21 I'm thinking of, might provide kind of the</p> <p>22 debate or the policy reasons underlying a</p> <p>23 particular rule or statute, is that a fair</p> <p>24 view?</p> <p>25 A. It's fair as a general proposition.</p>	<p style="text-align: right;">Page 76</p> <p>1 A. Henderson</p> <p>2 (Reporter requests clarification.)</p> <p>3 THE WITNESS: H-A-N-S-A-R-D, I</p> <p>4 guess.</p> <p>5 Q. And is that a source that you are</p> <p>6 relying upon in formulating your opinions?</p> <p>7 A. No.</p> <p>8 Q. Is it a source that you reviewed or</p> <p>9 consulted in formulating your opinions?</p> <p>10 A. No. I've never heard Hansard cited</p> <p>11 in relation to the Companies Act. And I'm not</p> <p>12 entirely sure that -- I don't think you could</p> <p>13 cite it in court.</p> <p>14 Q. Is there anything besides Hansard</p> <p>15 that one could turn to in order to determine</p> <p>16 or discern the policy reasons behind any</p> <p>17 particular provision of Part V of the</p> <p>18 Companies Act?</p> <p>19 A. Judicial authorities. Both in the</p> <p>20 Cayman Islands and in England.</p> <p>21 Q. So for both the Companies Act and</p> <p>22 the Winding Up Rules one could look to</p> <p>23 judicial opinions in order to find</p> <p>24 interpretations or policy reasons --</p> <p>25 A. Yes.</p>



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1 A. Henderson  
2 Q. -- for the provisions, right?  
3 A. Yes.  
4 Q. Can you think of any record that  
5 exists before the Companies Act was formally  
6 adopted by the Cayman Parliament or the  
7 Winding Up Rules were adopted by the committee  
8 that one could turn to, to try to understand  
9 how and why these rules came into existence?  
10 A. Well, I think history is probably  
11 the best guide. The Companies Act is largely  
12 based on the 18 -- 1948 U.K. Companies Act,  
13 which in turn is based upon a number of  
14 earlier statutes running right back to about  
15 1827 or so. And prior to that the history  
16 involved -- the history of joint stock  
17 companies is really tied up with trust  
18 indentures.  
19 Q. What you just described, unless  
20 it's set forth in your declaration, is it fair  
21 to say it's not material that you reviewed or  
22 relied upon in formulating your opinions in  
23 this case?  
24 MR. McDONALD: Objection to form.  
25 A. No, that's not fair. I rely upon

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1 A. Henderson  
2 my understanding of legal history. And in  
3 addition, I did refresh my memory on the 1862  
4 Joint Stock Companies Act, as I've said  
5 before. So I relied upon that.  
6 Q. And that is mentioned in your  
7 declaration, right?  
8 A. It is actually, yes.  
9 Q. Right. So other than the 1862 Act,  
10 is there anything else --  
11 MR. MORRIS: Withdrawn. I've asked  
12 these questions already.  
13 Q. Going back to your declaration. Do  
14 you have any knowledge concerning the Ascentra  
15 winding up proceeding other than what's set  
16 forth in paragraph 11 of your -- other than  
17 what's set forth in paragraph 12 of your  
18 declaration?  
19 A. No.  
20 Q. Do you know if Ascentra has any  
21 creditors?  
22 A. No.  
23 Q. Did you ever ask?  
24 A. No.  
25 Q. Is it relevant to your opinions?

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1 A. Henderson  
2 A. No.  
3 Q. So then is it fair to say that the  
4 opinions in your declaration would remain  
5 unchanged even if one assumed that Ascentra  
6 had no creditors?  
7 A. That is correct.  
8 Q. Do you know if any creditor ever  
9 filed a notice of appearance in the Ascentra  
10 windup proceedings?  
11 A. No.  
12 Q. Did you ever ask anybody?  
13 A. No.  
14 Q. And is that because it's not  
15 relevant to your opinions?  
16 A. Yes.  
17 Q. And is it fair to say that your  
18 opinions would not change even if you heard or  
19 learned that no creditor had ever appeared in  
20 the Ascentra windup proceeding?  
21 A. Yes.  
22 Q. Do you know if a creditor ever  
23 filed a complaint with the court overseeing  
24 Ascentra's windup proceedings?  
25 A. No.

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1 A. Henderson  
2 Q. Did you ever ask anybody?  
3 A. No.  
4 Q. And is that because it's not  
5 relevant to your opinions?  
6 A. Yes.  
7 Q. And is it fair to say that your  
8 opinions would remain unchanged even if you  
9 were instructed that no creditor had ever  
10 filed a complaint in the Ascentra windup  
11 proceedings?  
12 A. Yes.  
13 Q. Do you know if the JOLs in the  
14 Ascentra windup proceedings have ever disputed  
15 a claim by a creditor?  
16 A. No.  
17 Q. Did you ever ask?  
18 A. No.  
19 Q. Is it relevant to your opinions?  
20 A. No.  
21 Q. So is it fair to say that your  
22 opinions would remain unchanged even if you  
23 were instructed that the JOLs have never  
24 disputed a creditor claim?  
25 A. Yes.

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81-84

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1 A. Henderson

2 Q. Do you know if the JOLs have ever

3 communicated with any creditor of Ascentra?

4 A. No.

5 Q. Did you ever ask?

6 A. No.

7 Q. Is it relevant to your opinions?

8 A. No.

9 Q. Is it fair to say that your

10 opinions would remain unchanged even if you

11 were instructed that the JOLs have never

12 communicated with a creditor of Ascentra?

13 A. Yes.

14 Q. Do you know if any creditor has

15 played any role in any aspect of the Ascentra

16 winding up proceedings?

17 A. No.

18 Q. Have you ever asked?

19 A. No.

20 Q. And is that because that issue is

21 not relevant to your opinions?

22 A. Yes.

23 Q. And is it fair to say that your

24 opinions would remain unchanged even if you

25 were instructed that no creditor has ever

Page 82

1 A. Henderson

2 played any role in the Ascentra windup

3 proceedings?

4 A. Yes.

5 Q. I think we touched on this but just

6 to finish it up.

7 Your understanding is that two

8 years ago the JOLs issued their solvency

9 certificate that we have marked as exhibit 5,

10 right?

11 A. Yes.

12 Q. And under Order 8 of the windup

13 rules, the JOLs have the right to change the

14 solvency determination if they no longer

15 believed that it's justified, correct?

16 A. They have the right and the

17 obligation to.

18 Q. Okay. But that determination has

19 never been changed, to the best of your

20 knowledge, correct?

21 A. Correct.

22 Q. We talked about this generally, but

23 now let's talk about some specifics. The

24 rights of creditors would change if the

25 determination under Order 8 were changed from

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1 A. Henderson

2 solvent to something other than solvent,

3 correct?

4 A. That is correct.

5 Q. For example, if we look at Order 9.

6 Order 9 addresses liquidation committees, do I

7 have that right?

8 A. Yes.

9 Q. And under Order 9, creditors of a

10 solvent entity cannot sit on a liquidation

11 committee, correct?

12 A. Correct.

13 Q. But --

14 MR. McDONALD: Did you want to

15 point him to a specific provision?

16 MR. MORRIS: Sure.

17 Q. Order 9, Rule 1 (iii) --

18 A. Mm-hmm.

19 Q. -- states, that quote: The

20 liquidation committee shall comprise of not

21 less than three nor more than five

22 contributories -- and I'm summarizing -- if

23 the official liquidator has determined that

24 the company should be regarded as solvent.

25 A. Mm-hmm.

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1 A. Henderson

2 Q. Is that fair?

3 A. Yes.

4 Q. And so that's -- so the law in the

5 Cayman Islands under Order 9 Rule 1 (iii) is

6 that creditors cannot sit on a liquidation

7 committee of a solvent entity, correct?

8 A. Correct.

9 Q. But if the JOLs changed the

10 determination to either insolvent or doubtful

11 solvency, then creditors would be required to

12 be appointed to the liquidation committee,

13 correct?

14 A. Correct.

15 MR. McDONALD: Object to the form

16 of the prior question.

17 Q. In fact, just to be clear, that

18 provision is actually one that you cited in

19 footnote 7 in your declaration, right? Order

20 9, Rule 1(3)?

21 A. Okay.

22 Q. Right? So this is an example --

23 A. Yes.

24 Q. This is an example that you gave of

25 how the rights of creditors would be curtailed

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85-88

Page 85

1 A. Henderson  
2 in a solvent windup proceeding, correct?  
3 A. Yes.  
4 Q. Okay. And you also cited to Part  
5 VI of Order 9, Rule 1 as another instance  
6 where the rights of creditors would be  
7 curtailed in the case of a solvent windup  
8 proceeding, correct?  
9 A. Yes.  
10 Q. And in what way does Part VI of  
11 Order 9, Rule 1 curtail the rights of  
12 creditors in a solvent windup proceeding?  
13 A. Well, Order 9, Rule 1 (vi) says  
14 that if the determination is one of doubtful  
15 solvency, the liquidation committee shall  
16 comprise a majority of creditors and at least  
17 one contributory.  
18 Q. Okay. So right now Ascentra is a  
19 solvent entity, correct?  
20 A. Yes.  
21 Q. And that hasn't changed, correct?  
22 A. That's my understanding.  
23 Q. And therefore under Order 9, Rule 1  
24 (iii) they are barred from serving on a  
25 liquidation committee, correct?

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1 A. Henderson  
2 MR. McDONALD: Object to the form.  
3 A. That is my understanding, yes.  
4 Q. But if the JOLs ever changed the  
5 determination to either doubtful insolvency or  
6 insolvent, then creditors would be required to  
7 be appointed to the liquidation committee,  
8 correct?  
9 MR. McDONALD: Objection to form.  
10 A. Yes.  
11 Q. Okay. I apologize but I'm going to  
12 jump around just a little bit. Now let's go  
13 to Order Number 11, which can be found on page  
14 74 of the document.  
15 A. Yes.  
16 Q. And Order 11 concerns sanction  
17 applications, do you see that?  
18 A. Yes.  
19 Q. Okay. Under Order 11, Rule 3(4) --  
20 MR. MORRIS: Withdrawn.  
21 Q. What is a sanction application?  
22 A. It's an application for permission  
23 to embark upon a particular step, typically an  
24 important one.  
25 Q. Is it fair to say that a party in a

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1 A. Henderson  
2 winding up proceeding can't embark on  
3 important steps without obtaining court  
4 approval in the process, for obtaining court  
5 approval is to file a sanction application?  
6 A. Yes. There are certain types of  
7 actions or steps that cannot be taken by the  
8 JOLs until they have sanction.  
9 Q. And there are certain things that  
10 creditors or contributories cannot take  
11 without getting sanction, is that fair?  
12 A. I'm not quite sure what you mean.  
13 Q. Well, if you just take a look at  
14 Order 11, Rule 1 (1)(b), creditors or  
15 contributories are required to seek sanction  
16 if they want an order directing the official  
17 liquidator to exercise or refrain from  
18 exercising any of the liquidator's powers in a  
19 particular way?  
20 A. That is correct.  
21 Q. Okay.  
22 A. It doesn't -- sanction doesn't  
23 apply to the actions of the creditor or  
24 contributory. It applies to what the official  
25 liquidator is doing, yes.

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1 A. Henderson  
2 Q. Okay. So in certain  
3 circumstances --  
4 MR. MORRIS: Withdrawn.  
5 Q. In all circumstances if a creditor  
6 or a contributory wants to get an order that  
7 directs the liquidator to do something or not  
8 to do something, they've got to file a  
9 sanction application?  
10 A. Yes.  
11 Q. Okay.  
12 A. I think, as I've made clear in my  
13 declaration, if a creditor or a contributory  
14 were to bring a concern about the actions of  
15 the liquidators to the attention of the Court  
16 informally, for example, by letter to the  
17 judge, because of the supervisory jurisdiction  
18 that the judge is exercising, the judge would  
19 look into it.  
20 Q. But that informal process that  
21 you've just described isn't founded on any  
22 specific rule within the winding up laws,  
23 correct?  
24 A. No. It's just founded on the  
25 obligation the Court has to supervise.

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89-92

<p style="text-align: right;">Page 89</p> <p>1 A. Henderson</p> <p>2 Q. And that obligation to supervise,</p> <p>3 to the best of your knowledge, has never been</p> <p>4 exercised in the Ascentra bankruptcy case,</p> <p>5 correct?</p> <p>6 A. I've never been told that it's been</p> <p>7 exercised.</p> <p>8 Q. And you've never asked anybody,</p> <p>9 correct?</p> <p>10 A. No. That is correct.</p> <p>11 Q. And that's because it's not</p> <p>12 relevant to your opinions, correct?</p> <p>13 A. My opinion is a general one. It</p> <p>14 doesn't depend upon the facts of the Ascentra</p> <p>15 case really.</p> <p>16 Q. Okay. Rule 2 of Order 11 sets</p> <p>17 forth the rules as to who has to be served</p> <p>18 with sanction applications, is that fair?</p> <p>19 A. Yes.</p> <p>20 Q. And is it also a fair</p> <p>21 interpretation of Order 11, Rule 2 that unless</p> <p>22 directed by a court there is no requirement</p> <p>23 that any sanction application ever be served</p> <p>24 on the body of creditors?</p> <p>25 A. That is correct, where the entity</p>	<p style="text-align: right;">Page 91</p> <p>1 A. Henderson</p> <p>2 A. Rule 3(4) reads that the Court may</p> <p>3 allow creditors to be heard if the company is</p> <p>4 insolvent or of doubtful solvency.</p> <p>5 Q. Right. But the Court has really no</p> <p>6 authority to allow the creditor class to be</p> <p>7 heard on a sanction application if the company</p> <p>8 has been deemed to be solvent, correct?</p> <p>9 MR. McDONALD: Objection to form.</p> <p>10 A. They can't be heard -- they don't</p> <p>11 have a right to be heard. The Court -- it's</p> <p>12 difficult. And the rules are not necessarily</p> <p>13 in the best form. Because the Court has an</p> <p>14 obligation to supervise the actions of its</p> <p>15 officers, the JOLs. And if the creditors as a</p> <p>16 class, or if an individual creditor acting</p> <p>17 alone has a complaint about something the JOLs</p> <p>18 have done or failed to do, the Court in order</p> <p>19 to fulfill its supervisory obligation needs to</p> <p>20 look into it.</p> <p>21 Q. Okay.</p> <p>22 A. And that may involve hearing from</p> <p>23 the creditor or from the class of creditors</p> <p>24 for a period of time.</p> <p>25 So the rules in this particular are</p>
<p style="text-align: right;">Page 90</p> <p>1 A. Henderson</p> <p>2 is thought to be solvent.</p> <p>3 Q. Are you aware of any order that was</p> <p>4 ever entered in the Ascentra winding up</p> <p>5 proceeding that requires service of sanction</p> <p>6 applications upon any creditor?</p> <p>7 A. No.</p> <p>8 Q. Have you ever asked?</p> <p>9 A. No.</p> <p>10 Q. And that's because that's not</p> <p>11 relevant to your opinions, correct?</p> <p>12 A. Correct.</p> <p>13 Q. So to the best of your knowledge,</p> <p>14 it would be your opinion that creditors of</p> <p>15 Ascentra are not entitled to be served with</p> <p>16 sanction applications in accordance with Rule</p> <p>17 2 of Order 11?</p> <p>18 A. To the best of my knowledge, yes.</p> <p>19 Q. Now let's look at Rule 3 of Order</p> <p>20 11.</p> <p>21 A. Yes.</p> <p>22 Q. Rule 3(4) is the provision that</p> <p>23 bars creditors from being heard on a sanction</p> <p>24 application, correct, for a solvent entity?</p> <p>25 MR. McDONALD: Objection to form.</p>	<p style="text-align: right;">Page 92</p> <p>1 A. Henderson</p> <p>2 not well thought out.</p> <p>3 Q. Is it your opinion that there is</p> <p>4 any circumstance where a creditor or the body</p> <p>5 of creditors would be permitted to be heard on</p> <p>6 a sanction application in a winding up</p> <p>7 proceeding involving a solvent entity?</p> <p>8 A. Yes.</p> <p>9 Q. Have you ever heard that happen</p> <p>10 before?</p> <p>11 A. I have no specific recollection of</p> <p>12 it, but I imagine it would have happened. I'm</p> <p>13 reasonably sure that I would have done it at</p> <p>14 one time or another in all the sanction</p> <p>15 applications I've heard.</p> <p>16 Q. Wouldn't that conflict with the</p> <p>17 very plain terms of Order 11, Rule 3(4)?</p> <p>18 A. Yes.</p> <p>19 Q. Okay.</p> <p>20 A. The rules in my view are for the</p> <p>21 most part authoritative guidelines. But the</p> <p>22 Court has a discretion to depart from them if</p> <p>23 necessary.</p> <p>24 Q. And what's the basis for that</p> <p>25 opinion?</p>



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<p style="text-align: right;">Page 93</p> <p>1 A. Henderson</p> <p>2 A. First, we are exercising equitable</p> <p>3 jurisdiction. And secondly, we are engaged in</p> <p>4 a supervisory process.</p> <p>5 Q. And you can't think -- you're not</p> <p>6 aware of any instance where that happened in</p> <p>7 the Ascentra bankruptcy, correct?</p> <p>8 A. No. That's correct.</p> <p>9 Q. And you can't think of anything</p> <p>10 that happened -- you can't think of a specific</p> <p>11 instance during your tenure as a judge in the</p> <p>12 Cayman Islands where you decided not to follow</p> <p>13 Rule 11 -- Order 11, Rule 3(4) and permitted a</p> <p>14 creditor to file a sanction application,</p> <p>15 right?</p> <p>16 A. I wouldn't permit a creditor to</p> <p>17 file a sanction application. Because they</p> <p>18 have no standing to do so.</p> <p>19 Q. Okay.</p> <p>20 A. But I would permit a creditor, or</p> <p>21 the attorney for a creditor, to address the</p> <p>22 Court.</p> <p>23 Q. Fair enough.</p> <p>24 A. That's the distinction. I'm not</p> <p>25 saying to the creditor you have a right to</p>	<p style="text-align: right;">Page 95</p> <p>1 A. Henderson</p> <p>2 and the creditors shall have no right to be</p> <p>3 heard.</p> <p>4 Have I read that correctly?</p> <p>5 A. That is correct.</p> <p>6 Q. And that's the law, right?</p> <p>7 A. That is the law.</p> <p>8 Q. Okay. That's not a rule that's</p> <p>9 optional, correct?</p> <p>10 A. No. I mean, we're talking about</p> <p>11 the right to be heard.</p> <p>12 Q. Right.</p> <p>13 A. That's a law.</p> <p>14 Q. And similarly if the company is</p> <p>15 insolvent, under Section 110 of the Companies</p> <p>16 Act part (4)(b), those creditors will have the</p> <p>17 absolute right to make a sanction application?</p> <p>18 A. That is correct.</p> <p>19 Q. Whereas contributories in the case</p> <p>20 of an insolvent company are absolutely barred</p> <p>21 from making a sanction application?</p> <p>22 A. That is correct.</p> <p>23 Q. Okay. This may cover ground that</p> <p>24 we've covered again but I want to ask</p> <p>25 specifically in this context.</p>
<p style="text-align: right;">Page 94</p> <p>1 A. Henderson</p> <p>2 speak. I'm saying I will exercise by</p> <p>3 discretion in favor of listening to you for a</p> <p>4 period of time. I would probably impose a</p> <p>5 time limit, too. I would want to get on with</p> <p>6 it.</p> <p>7 Q. I appreciate that. Okay.</p> <p>8 And the flip side is also true; and</p> <p>9 by "the flip side" I mean if you're a creditor</p> <p>10 of an insolvent company or a company of</p> <p>11 doubtful solvency you have the absolute right</p> <p>12 to file a sanction application, right?</p> <p>13 A. An absolute right, yes.</p> <p>14 Q. And all of this is very consistent</p> <p>15 with the Companies Act itself, right?</p> <p>16 A. I think it is.</p> <p>17 Q. Well, if you take a look at exhibit</p> <p>18 2, Section 110 of the Companies Act which can</p> <p>19 be found at page 84.</p> <p>20 A. Thank you.</p> <p>21 Q. Section 110 states in (4)(a) --</p> <p>22 A. Yes.</p> <p>23 Q. -- that in the case of a solvent</p> <p>24 company, a sanction application may only be</p> <p>25 heard -- may only be made by a contributory</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Henderson</p> <p>2 Do you know what the purpose is of</p> <p>3 barring creditors from filing sanction</p> <p>4 applications in winding up proceedings</p> <p>5 involving solvent entities but giving them the</p> <p>6 right to do so if the entity is insolvent or</p> <p>7 of doubtful insolvency?</p> <p>8 A. I think the purpose is to support</p> <p>9 the efficiency of the Court's process. It</p> <p>10 would not be a useful use of time to hear from</p> <p>11 the creditor class in a formal manner if the</p> <p>12 entity is thought to be solvent.</p> <p>13 Q. And why is that the case, in your</p> <p>14 opinion?</p> <p>15 A. Because the primary economic</p> <p>16 interest is that of the shareholders.</p> <p>17 Q. And is that because the creditors</p> <p>18 are required to be paid in full in the</p> <p>19 ordinary course?</p> <p>20 A. Yes.</p> <p>21 Q. One of the things that you read in</p> <p>22 connection with the preparation of your</p> <p>23 opinions is the declaration of Mr. Robinson,</p> <p>24 do I have that right?</p> <p>25 A. Yes.</p>

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1 A. Henderson  
2 Q. Okay.  
3 MR. MORRIS: I am going to mark  
4 that as an exhibit.  
5 (Henderson Exhibit 6, Declaration  
6 of Mr. Robinson was marked for  
7 identification).  
8 Q. Do you have that before you, sir?  
9 A. I do.  
10 Q. Okay. And if you turn to page 15,  
11 do you see that it was signed on October 27,  
12 2021?  
13 A. I'm having trouble locating the  
14 page numbers. Yes. October 27, '21.  
15 Q. Okay. And that's after the --  
16 that's after Mr. Robinson had prepared and  
17 filed with the Cayman court his solvency  
18 certificate, right? If you take a look at  
19 exhibit 5.  
20 A. Yes, I see that.  
21 Q. So just looking at the documents  
22 you can confirm for me that Mr. Robinson  
23 signed his solvency certificate and filed it  
24 with the Cayman Islands on September 23, 2021?  
25 A. That's what the document says.

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1 A. Henderson  
2 Q. And he signed and filed his  
3 declaration in New York a little bit more than  
4 a month later on October 27, 2021, right?  
5 A. I see that, yes.  
6 Q. Okay. And you --  
7 MR. McDONALD: Just one moment. At  
8 the top of the page it has the number --  
9 it has 2021-09-27. I don't know if  
10 that's a filed date versus the actual  
11 date of the certificate itself. It's  
12 just to clarify. You said filed. I  
13 don't know if that --  
14 MR. MORRIS: I'm sorry, Hugh.  
15 Which document are you referring to?  
16 MR. McDONALD: On document 5.  
17 Exhibit 5. The top, which appears to be  
18 from the docket of the Cayman court it  
19 says 2021-09-27. But it's dated the  
20 23rd. So you used the term "filed." I  
21 just want to be clear here.  
22 MR. MORRIS: Okay. Let me ask it  
23 this way.  
24 Q. You're very comfortable that  
25 Mr. Robinson signed and filed in the Cayman

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1 A. Henderson  
2 court the certificate of solvency in September  
3 2021, which is exhibit 5?  
4 A. Yes.  
5 Q. And he signed and filed his  
6 declaration in New York in October 2021,  
7 correct?  
8 A. Yes.  
9 Q. Okay.  
10 Now, you said you reviewed,  
11 according to paragraph 11 of your declaration  
12 you reviewed Mr. Robinson's declaration in  
13 connection with the preparation of your  
14 opinions, right?  
15 A. Yes.  
16 Q. If you just flip through it, unless  
17 you have some other recollection, to the best  
18 of your knowledge, Mr. Robinson did not attach  
19 the solvency certificate to his declaration  
20 that was filed in New York in October 2021,  
21 correct?  
22 A. If you say that's correct, I'll  
23 take it as correct.  
24 Q. I don't want you to take my word  
25 for it. You can look through it. I mean, you

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1 A. Henderson  
2 know, you said you --  
3 A. I don't see it here.  
4 Q. Okay. And you don't have a  
5 recollection of ever seeing it here, right?  
6 A. Oh, no.  
7 Q. And if we turn to paragraph 36 of  
8 your declaration. You specifically state,  
9 quote, "Although these declarations do not  
10 expressly -- do not say expressly that the  
11 JOLs believe Ascentra to be solvent, I do not  
12 find them misleading."  
13 Do you see that sentence?  
14 A. Yes, I do.  
15 Q. Okay. And when you use the phrase,  
16 "declarations," you're referring not only to  
17 Mr. Robinson's declaration that we've looked  
18 at, but Mr. Cowan's declaration as well?  
19 A. Yes.  
20 Q. Okay. So let me just mark  
21 Mr. Cowan's declaration so that we've got it  
22 in the record.  
23 MR. MORRIS: It's going to be  
24 exhibit 7, I believe?  
25 THE COURT REPORTER: Yes, sir.

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ASCENTRA HOLDINGS, INC.

September 28, 2023  
101-104

Page 101

1 A. Henderson  
2 (Henderson Exhibit 7, Declaration  
3 of Mr. Cowan was marked for  
4 identification).  
5 Q. And so having reviewed --  
6 withdrawn.  
7 You reviewed Mr. Cowan's  
8 declaration and Mr. Robinson's declaration in  
9 connection with the preparation of your expert  
10 report, correct?  
11 A. Yes.  
12 Q. Okay. And having reviewed those  
13 two declarations, you noticed that neither of  
14 them expressly stated that the JOLs had  
15 determined that Ascentra was solvent, correct?  
16 A. I noticed that.  
17 Q. And you also now know that neither  
18 declaration included the solvency certificate  
19 that was filed a month earlier in the Cayman  
20 Islands, correct?  
21 A. Correct.  
22 Q. And in your opinion, that solvency  
23 certificate has substantial implications  
24 concerning the rights of creditors, correct?  
25 MR. McDONALD: Objection to form.

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1 A. Henderson  
2 A. It's not so much the certificate  
3 has those implications, but the fact of  
4 solvency.  
5 Q. Okay. And the fact of solvency is  
6 reflected in the certificate, right?  
7 A. Yeah. It's the primary evidence of  
8 it.  
9 Q. And until that certificate is  
10 filed --  
11 What happens between the period of  
12 time when the petition is filed and the  
13 liquidators make a declaration?  
14 A. Chaos, probably.  
15 Q. It's intended to be a fairly brief  
16 period of time, right?  
17 A. Yes.  
18 Q. Okay. So you would agree that the  
19 filing of the insolvency certificate in the  
20 Cayman Islands is an important event, right?  
21 A. Yes.  
22 Q. And it's an important event because  
23 upon the filing of the solvency certificate,  
24 the rights of creditors are curtailed, to use  
25 your term, right?

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1 A. Henderson  
2 A. Yes.  
3 Q. And despite the fact that the  
4 rights of Ascentra's creditors, assuming that  
5 creditors actually exist, were curtailed in  
6 September of 2021, neither Mr. Robinson nor  
7 Mr. Cowan ever informed the New York court, to  
8 the best of your knowledge, that that event  
9 had occurred, correct?  
10 MR. McDONALD: Objection to form.  
11 A. Neither of them informed the  
12 New York court in so many words that it had  
13 occurred.  
14 Q. Okay.  
15 A. Mr. Robinson, whose evidence would  
16 be the primary evidence on this subject, set  
17 out facts, a couple of facts which lead the  
18 reader to think that this is a solvent entity.  
19 Q. In fact, in your opinion in order  
20 to discern the conclusion that Ascentra is  
21 solvent, one needed to undertake a careful  
22 reading of Mr. Robinson's declaration,  
23 correct?  
24 MR. McDONALD: Objection to form.  
25 A. I don't know how careful it would

Page 104

1 A. Henderson  
2 have to be. But one needs to draw the  
3 inference from certain statements that he  
4 makes.  
5 Q. Well, in fact the very last  
6 sentence of your declaration says, quote,  
7 "Overall" --  
8 A. Yes.  
9 Q. -- "a careful reading of the  
10 declaration leads to the conclusion," right?  
11 A. Okay. Yes, it does.  
12 Q. So in your own words the only way a  
13 reader would know that Ascentra was solvent is  
14 by undertaking a careful reading, correct?  
15 MR. McDONALD: Objection to form.  
16 A. That's not -- I suppose. It's not  
17 really part of my expertise, whether it's a  
18 careful reading or an ordinary reading, is not  
19 something I have an opinion on really.  
20 Q. Well, you needed to undertake a  
21 careful reading in order to come to the  
22 conclusion, correct? That's why you swore --  
23 MR. McDONALD: Objection to form.  
24 Q. -- it was true, correct?  
25 MR. McDONALD: Object to the form.

ALEXANDER GRAY HENDERSON, KC  
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September 28, 2023  
105-108

Page 105

1 A. Henderson  
2 A. I needed to read his declaration,  
3 and fit certain facts together in order to  
4 determine that this was a solvent entity.  
5 Q. The word "solvent" -- do you recall  
6 if the word "solvent" is used in either  
7 declaration?  
8 A. I don't recall.  
9 Q. If it was, a careful reading  
10 wouldn't be required, correct?  
11 A. Yeah, I mean if you put it up  
12 front.  
13 Q. Did you ever ask anybody why  
14 neither Mr. Robinson nor Mr. Cowan attached a  
15 copy of the solvency certificate to their  
16 declarations at the outset of the Chapter 15  
17 proceeding?  
18 A. I don't know if I asked. But if I  
19 did it would be a privileged communication.  
20 Wouldn't it?  
21 Q. I don't know. I'll let your  
22 counsel answer that.  
23 A. The honest answer is I don't  
24 remember.  
25 Q. Then we don't have to worry about

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1 A. Henderson  
2 it.  
3 Did you ever ask anybody why they  
4 didn't just say in their declarations, that  
5 Ascentra is solvent?  
6 MR. McDONALD: That is privileged.  
7 I object. I instruct you -- I instruct  
8 the witness not to answer.  
9 A. There was at some point some  
10 conversation about that. But it seems to me  
11 it's a privileged communication.  
12 Q. Okay. So to the extent you ever  
13 asked the question, you're not willing to  
14 share with me what you were told about why  
15 they chose not to include the word "solvent"  
16 in their declarations, is that fair?  
17 A. I'm not willing to violate the  
18 solicitor/client privilege enjoyed by my  
19 client.  
20 Q. I appreciate that.  
21 In reviewing the declarations in  
22 connection with the preparation of your expert  
23 opinions, do you recall any mention of the  
24 curtailment of rights of creditors in the  
25 Ascentra winding up proceeding in the Cayman

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1 A. Henderson  
2 Islands?  
3 A. I don't have a specific  
4 recollection of that. I would have to review  
5 the whole document.  
6 Q. Is there anything in either  
7 declaration that you recall that describes the  
8 rights of creditors in a windup proceeding  
9 involving a solvent entity?  
10 A. I don't recall that appearing in  
11 these documents.  
12 Q. If you could take Mr. Cowan's  
13 declaration, the one that's marked as exhibit  
14 7.  
15 A. Yes, I have that.  
16 Q. And if you could turn to page 3.  
17 A. Yes.  
18 Q. Do you see at the bottom the  
19 heading roman numeral III states, quote,  
20 "Insolvency in the Cayman Islands"?  
21 A. I see that.  
22 Q. To the best of your knowledge and  
23 as you've been instructed, Ascentra is not  
24 insolvent, correct?  
25 A. It is not believed to be insolvent

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1 A. Henderson  
2 at this time.  
3 Q. It hasn't been determined to be  
4 insolvent by the joint official liquidators,  
5 correct?  
6 A. Correct.  
7 Q. The Cayman court has never been  
8 told that Ascentra is anything but solvent,  
9 correct?  
10 A. As far as I know, that's correct.  
11 Q. And there's no provision that  
12 uniquely applies to insolvent corporations in  
13 a winding up proceeding in the Cayman Islands  
14 that would also apply to Ascentra in its  
15 windup proceeding, correct?  
16 MR. McDONALD: Objection to form.  
17 A. Well, we touched on this earlier.  
18 Yes, there are some proceedings that apply  
19 whether the company is solvent or insolvent.  
20 Q. Correct. And I apologize, I'm sure  
21 it was my question. I'm focused only on the  
22 portion of the Winding Up Rules that apply to  
23 insolvent companies.  
24 MR. MORRIS: Withdrawn.  
25 Q. There are certain rules in the



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109-112

Page 109

1 A. Henderson  
2 Winding Up Rules that apply only to solvent  
3 companies, correct?  
4 A. That is correct.  
5 Q. And there are certain rules that  
6 apply only to companies of doubtful solvency,  
7 correct?  
8 A. Yes.  
9 Q. There are certain rules that only  
10 apply to insolvent companies, correct?  
11 A. Yes.  
12 Q. And then there are certain rules  
13 that apply to all of them?  
14 A. Yes.  
15 Q. Okay. So I am focused on the  
16 second and the third category: Doubtful  
17 insolvency and insolvency.  
18 A. Okay.  
19 Q. Only with respect to those specific  
20 rules, none of them would apply to Ascentra,  
21 correct?  
22 A. Correct.  
23 Q. Okay. Can you think of any reason  
24 why Mr. Cowan would describe the proceeding in  
25 the Cayman Islands as, quote, "insolvency" at

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1 A. Henderson  
2 the bottom of page 3?  
3 MR. McDONALD: Objection to form.  
4 A. I don't want to speculate on why  
5 Mr. Cowan would or would not have done certain  
6 things.  
7 Q. I don't want you to do that either  
8 so let me ask a better question.  
9 As a former judge and as an expert  
10 on Cayman Islands winding up laws, would you  
11 ever describe the Ascentra windup proceedings  
12 as an insolvency proceeding?  
13 MR. McDONALD: Objection to form.  
14 A. Not at the moment, no.  
15 Q. Okay. And at no time -- to the  
16 best of your knowledge, at no time since the  
17 moment it was commenced, is that fair?  
18 A. Correct.  
19 Q. Okay.  
20 A. I would describe it as a winding up  
21 proceeding.  
22 Q. Thank you.  
23 MR. MORRIS: All right, we can put  
24 the declarations to the side for now.  
25 Can you pull back the Winding Up Rules.

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1 A. Henderson  
2 THE WITNESS: Yes.  
3 MR. MORRIS: And let's go to Order  
4 Number 16. Which begins at page 93.  
5 THE WITNESS: Yes.  
6 Q. Order 16, Rule 1(i) is the rule  
7 that provides that if the company being  
8 liquidated is solvent, the liquidator is  
9 required to pay the debts owing to its  
10 creditors in the ordinary course, correct?  
11 A. Correct.  
12 Q. That's the source of that concept,  
13 right?  
14 A. I suppose. It seems to me inherent  
15 in the process whether you have a rule that  
16 says so or not.  
17 Q. Well, if you have a rule you're  
18 kind of required to follow it, right?  
19 MR. McDONALD: Object to the form.  
20 A. Yeah I --  
21 MR. MORRIS: Withdrawn.  
22 Q. Liquidators are required to pay  
23 creditors --  
24 A. They are.  
25 Q. -- in the ordinary course --

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1 A. Henderson  
2 A. They are.  
3 Q. Okay.  
4 A. Even if you didn't have a rule, the  
5 Court would certainly expect it.  
6 Q. Okay. But expectations aside, you  
7 do have a rule, right?  
8 A. We do have a rule, yes.  
9 Q. And liquidators must follow the  
10 rule, correct?  
11 A. They must follow the rules.  
12 Q. Okay.  
13 A. Or they should.  
14 Q. Do you, as a former judge and  
15 expert on the Winding Up Rules, have an  
16 understanding of what ordinary course means?  
17 A. I wrote a Law Journal article on it  
18 once.  
19 Q. Great. So can you tell me what  
20 your understanding of ordinary course means?  
21 A. In my view a company in a winding  
22 up proceeding is not engaged in the ordinary  
23 course of business. I think the rules here  
24 are inaptly worded, but the concept is that if  
25 the company is solvent, the invoices submitted

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113-116

Page 113

1 A. Henderson  
2 by creditors should be paid within the time  
3 that payment is due.  
4 Q. That's right.  
5 A. 30 days, typically.  
6 Q. But invoices have different payment  
7 terms, is that fair?  
8 A. Yes.  
9 Q. So some goods or service providers  
10 will render invoices that require payment  
11 within 30 days, right?  
12 A. Yes.  
13 Q. Some of them will allow for 45  
14 days, correct?  
15 A. Yes.  
16 Q. Some of them want cash on delivery,  
17 right?  
18 A. Probably, yes. We don't use much  
19 cash in the Cayman Islands. It's disapproved  
20 of.  
21 Q. But whatever the creditor's payment  
22 terms, a liquidator of a solvent entity is  
23 required under Order 16 Rule Number 1 (1) to  
24 pay them in the ordinary course, correct?  
25 A. That is correct.

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1 A. Henderson  
2 Q. And because creditors may have  
3 different payment terms, they're going to get  
4 paid at different times if it's a solvent  
5 entity, correct?  
6 A. Yes. In a typical case. I mean,  
7 there are -- I suppose, one could imagine  
8 circumstances where they wouldn't. But in a  
9 typical case, yes.  
10 Q. And the creditors of a solvent  
11 entity under Order 16, Rule 1(1) are also  
12 going to get paid in full in all instances,  
13 correct?  
14 MR. McDONALD: Object to the form.  
15 A. In the typical case, yes.  
16 Q. That's what's expected and required  
17 under that rule, correct?  
18 MR. McDONALD: Objection to form.  
19 A. Well, that would be the norm. But  
20 the liquidators still have to come to a  
21 considered decision that the debt is due and  
22 owing.  
23 Q. Okay. So let's take that into  
24 account.  
25 A. Yes.

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1 A. Henderson  
2 Q. Subject to the resolution of --  
3 MR. MORRIS: Withdrawn.  
4 Q. For undisputed debts --  
5 A. For undisputed debt, yes.  
6 Q. -- the liquidators of a solvent  
7 entity are required to pay creditors in full  
8 in the ordinary course, correct?  
9 A. Correct.  
10 Q. Okay. And you note in your own  
11 declaration that in fact while Ascentra is  
12 winding down and the process of winding down  
13 may not be in your view ordinary course to  
14 begin with, they still engage service  
15 providers, right?  
16 A. Oh, yes.  
17 Q. Right?  
18 A. They certainly do.  
19 Q. And among those that are mentioned  
20 in paragraph 36 of your declaration are things  
21 such as information, storage and maintenance,  
22 right?  
23 A. Well, yes Mr. Robinson referred to  
24 those.  
25 Q. Yes. And so those service

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1 A. Henderson  
2 providers and maintenance providers are  
3 entitled to get paid in the ordinary course in  
4 full under Order 16, Rule 1, right?  
5 A. Correct.  
6 Q. Under that rule creditors are also  
7 entitled to get paid in the currency of the  
8 obligation --  
9 A. Correct.  
10 Q. -- as if the company were still  
11 operating, correct?  
12 A. Correct.  
13 Q. Now, in contrast, you would agree  
14 that creditors of an insolvent company or  
15 creditors of a company of doubtful solvency  
16 have no right to get paid in full, correct?  
17 MR. McDONALD: Object to the form.  
18 A. They have no right to get paid in  
19 full prior to the pari passu distribution that  
20 we expect to take place.  
21 Q. So --  
22 A. If that distribution happened to be  
23 100 cents on the dollar. And it could happen  
24 that they could be paid in full. But ...  
25 Q. Right. But other than that they're

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117-120

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1 A. Henderson  
2 just going to get paid pro rata along with  
3 other creditors in their class?  
4 A. Correct.  
5 Q. How many cases are you aware of  
6 that were filed as insolvent or of doubtful  
7 insolvency where creditors got paid 100 cents  
8 on the dollar?  
9 MR. McDONALD: Object to the form.  
10 A. Again, I'm not -- you know, I don't  
11 remember specific cases, I've done so many of  
12 them. So the answer is zero.  
13 Q. Okay.  
14 A. But there probably were some.  
15 Q. But you can't remember any; fair?  
16 A. Fair. Yeah, I mean, but anything  
17 that can happen probably did happen at some  
18 point.  
19 Q. And creditors of a solvent --  
20 MR. MORRIS: Withdrawn.  
21 Q. Creditors of an insolvent company  
22 or a company of doubtful solvency had no right  
23 to get paid in accordance with their payment  
24 terms, correct?  
25 MR. McDONALD: Object to the form.

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1 A. Henderson  
2 A. No, their only right is to be the  
3 recipient of a pari passu distribution towards  
4 the end of the process.  
5 Q. Right. And so they're going to  
6 have to wait, isn't that right?  
7 A. They're going to have to wait.  
8 Q. They're not going to get paid in  
9 accordance with their invoice terms, correct?  
10 MR. McDONALD: Object to the form.  
11 A. No.  
12 Q. Creditors of an insolvent company  
13 or a company of doubtful solvency have no  
14 right to get paid in the currency of the  
15 obligation, correct?  
16 A. I'm not sure about that. I would  
17 have to look it up. I mean, I think the pari  
18 passu distribution would ordinarily be, take  
19 into account the currency of the obligation.  
20 Would it not?  
21 Q. You're the expert.  
22 A. I don't know without looking it up.  
23 Q. Fair enough.  
24 A. And it probably doesn't matter to  
25 you, does it?

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1 A. Henderson  
2 Q. I think -- I think we can see  
3 from -- it does matter, actually. We can see  
4 from Order 16, Rule 1(1) that creditors of a  
5 solvent entity have the --  
6 A. Yeah.  
7 Q. -- absolute right to get paid in  
8 the currency of the obligation, correct?  
9 A. Correct.  
10 Q. Can you point me to anywhere in the  
11 windup laws that gives creditors of an  
12 insolvent company or a company of doubtful  
13 solvency that same right?  
14 A. No.  
15 Q. You used the phrase pari passu a  
16 few moments ago. Did I hear that correctly?  
17 A. Yes.  
18 Q. And do you have an understanding of  
19 that term?  
20 A. Yes.  
21 Q. What's your understanding of the  
22 phrase pari passu?  
23 A. That each creditor would be given a  
24 certain percentage of the distribution amount  
25 that is in direct proportion to that

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1 A. Henderson  
2 creditor's -- that is in the same proportion  
3 as that creditor's debt is to the whole of the  
4 debt. It's ratable.  
5 Q. And do creditors of an insolvent  
6 entity or an entity of doubtful solvency get  
7 paid pari passu?  
8 A. Usually, yes.  
9 Q. Can you think of any instance where  
10 creditors of an insolvent entity or an entity  
11 of doubtful solvency got paid in any manner  
12 other than pari passu?  
13 A. No. I mean, I think by definition  
14 if they were to get 100 cents on the dollar,  
15 then the entity was solvent.  
16 Q. So fair to say the answer is no?  
17 A. Yes.  
18 Q. Okay. And when you use the phrase  
19 "pari passu," that also means that all  
20 creditors will be paid at exactly the same  
21 time, correct?  
22 MR. McDONALD: Objection to form.  
23 MR. MORRIS: Withdrawn.  
24 Q. When you use the phrase "pari  
25 passu," you mean that distributions will be

ALEXANDER GRAY HENDERSON, KC  
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121-124

Page 121

1 A. Henderson  
2 made to creditors at the same time?  
3 A. Correct.  
4 Q. And that's different than what  
5 happens for creditors of solvent entities who  
6 get paid in the ordinary course, fair?  
7 A. Correct.  
8 Q. Do you have an understanding of the  
9 policy rationale for using different payment  
10 methods depending on whether the creditors are  
11 of a solvent entity versus an entity that's  
12 either insolvent or of doubtful solvency?  
13 A. I think I do.  
14 Q. Can you share that with me?  
15 A. Well, if the liquidators expect on  
16 good grounds that the entity will be solvent,  
17 then it would appear to be safe to pay the  
18 creditors in full as their debts fall due.  
19 Whereas, if the liquidators expect  
20 on good grounds that the entity will be  
21 insolvent, one wishes to wait until all the  
22 proofs of debt have been adjudicated and then  
23 make a ratable distribution. I'm not sure if  
24 I'm addressing your question or not.  
25 Q. I think that makes sense. Do you

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1 A. Henderson  
2 have anything to add? Or is that --  
3 A. No, I don't.  
4 MR. MORRIS: Off the record.  
5 (Discussion off the record.)  
6 (Lunch recess taken at 11:55 a.m.)  
7  
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Page 123

1 A. Henderson  
2 AFTERNOON SESSION  
3 (12:35 p.m.)  
4 ---  
5  
6 ALEXANDER HENDERSON,  
7 resumed as a witness, having been  
8 previously sworn by a Notary Public,  
9 was examined and testified further as  
10 follows:  
11 MR. MORRIS: We are back on the  
12 record.  
13 EXAMINATION BY  
14 MR. MORRIS:  
15 Q. Mr. Henderson, could I trouble you,  
16 please, to take the Wind Up Rules which are  
17 exhibit 3.  
18 A. Yes.  
19 Q. I just have a few more rules I  
20 would like to hit and then we'll deal with  
21 Ms. Pearson and then we'll be done.  
22 So if you can turn to page 59,  
23 which is Order 8.  
24 A. Yes.  
25 Q. Order 8 addresses meetings of

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1 A. Henderson  
2 creditors and contributories, right?  
3 A. Yes.  
4 Q. And contributories is a phrase  
5 that's used in the Cayman Islands that would  
6 be analogous to the phrase that's used in the  
7 United States for shareholders, right?  
8 A. Correct, or members is another  
9 term.  
10 Q. Or members. So depending on  
11 whether it's a corporation or a limited  
12 liability type company, it's either a  
13 shareholder or a member, right?  
14 A. Okay.  
15 Q. Okay. I am asking you, is my  
16 understanding correct?  
17 A. Yes.  
18 Q. Okay. And if you'll look down at  
19 Order 8, Rule 1(5), as long as the liquidator  
20 determines that the company is solvent, then  
21 the liquidator is required to convene meetings  
22 only with contributories, correct?  
23 A. Correct.  
24 Q. But if the liquidator determines  
25 that the entity is insolvent, only creditors



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1 A. Henderson  
2 will be permitted to participate in official  
3 meetings under (4), correct?  
4 A. Correct.  
5 Q. Okay. And, again, do you have an  
6 understanding of what the policy is behind the  
7 rules that require the participation of  
8 creditors in meetings of insolvent entities  
9 but bar the participation of creditors of  
10 meetings concerning solvent companies?  
11 MR. McDONALD: Objection to form.  
12 A. Yes, I have.  
13 Q. Can you share that with me?  
14 A. If the entity is insolvent, the  
15 creditors are going to have the ultimate  
16 economic interest in the outcome. They are  
17 going to be paid ratably, according to the  
18 proportionate size of their debts.  
19 If the entity is solvent, one  
20 assumes that the creditors will be paid in  
21 full in the so-called ordinary course, and the  
22 shareholders will have the ultimate financial  
23 interest.  
24 Q. By the way, I don't think we  
25 covered this. Can you just tell me what a

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1 A. Henderson  
2 liquidation committee is in the context of a  
3 winding up proceeding?  
4 A. It's a committee of those who are  
5 presumed to have the primary financial  
6 interest in the outcome. They are to  
7 represent their classes. So in an insolvent  
8 winding up, the committee would be composed of  
9 representatives of the creditor class.  
10 Q. And is it true that the rights and  
11 powers of liquidation committees are actually  
12 set forth in Order Number 9? And that begins  
13 on page 65.  
14 A. It deals with liquidation  
15 committees, yes. They don't have a lot of  
16 rights and powers. They are essentially  
17 advisory in nature. The JOLs consult them and  
18 are expected to consult them. Their views  
19 have to be considered, have to be taken into  
20 account. But they don't have a lot of rights.  
21 The rights reside mostly with the court. The  
22 JOLs acting on behalf of the court.  
23 Q. Do you know if liquidation  
24 committees typically retain counsel?  
25 A. I would say typically they don't.

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1 A. Henderson  
2 But sometimes counsel -- sometimes counsel get  
3 involved.  
4 Q. Can liquidation committees hire  
5 other professionals such as financial advisers  
6 or investment bankers?  
7 A. They can always hire people. The  
8 question becomes whether the liquidation  
9 estate is going to pay for it or not. They  
10 would need to consult with the JOLs, convince  
11 the JOLs that it's a reasonable expenditure.  
12 Q. Do liquidation committees have the  
13 right to receive notice of sanction  
14 applications?  
15 A. Yes. Yes, I think so.  
16 Q. Do they --  
17 A. I would certainly expect them to  
18 receive notice.  
19 Q. And do liquidation committees also  
20 have the right to file sanction applications?  
21 A. The committee itself? I don't know  
22 if it does or not. I would have to look at  
23 the wording of the rules.  
24 Q. Okay. Are you aware of any source  
25 of the powers, rights or authority of

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1 A. Henderson  
2 liquidation committees other than what is set  
3 forth in Order 9?  
4 A. No.  
5 Q. Now, if you could go back to the  
6 Companies Act. I just want to review some of  
7 the rights that --  
8 A. Yes.  
9 Q. -- you have said have been  
10 curtailed for creditors of solvent entities.  
11 That's footnote 7.  
12 So the first thing you refer to is  
13 Companies Act Section 102(3)?  
14 A. Okay.  
15 Q. And can you just tell me your  
16 understanding of how Section 102(3) curtails  
17 the rights of creditors in a solvent winding  
18 up proceeding?  
19 A. Yes. This pertains to the  
20 expenditure of money from the liquidation  
21 estate. And if the entity is thought to be  
22 solvent, the JOLs must obtain the prior  
23 approval of the contributories. And if the  
24 estate is thought to be insolvent, the prior  
25 approval of the creditors under 102(3).

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ASCENTRA HOLDINGS, INC.

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1 A. Henderson  
2 Q. Okay. Thank you. And then you  
3 also cited Section 105(3) of the Companies  
4 Act?  
5 A. Yes.  
6 Q. What about that subsection of 105  
7 curtails the rights of creditors in the case  
8 of a winding up proceeding for a solvent  
9 entity?  
10 A. Well, if the entity is thought to  
11 be solvent, the liquidators within 28 days of  
12 the date the winding up order is made shall  
13 summon a meeting of the shareholders -- or  
14 contributories -- only. The creditors have no  
15 right to attend.  
16 Q. All right. Let's just go to your  
17 declaration. You can put the rules to the  
18 side for the moment. And I would ask you to  
19 turn your attention to I guess beginning at  
20 paragraph 29 through 36 where you offer some  
21 responses --  
22 A. Oh, yes.  
23 Q. -- to portions of Ms. Pearson's  
24 declaration.  
25 A. Mm-hmm.

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1 A. Henderson  
2 Q. Do you know Ms. Pearson?  
3 A. No.  
4 Q. Have you ever met her?  
5 A. No.  
6 Q. Do you know anything about her  
7 reputation?  
8 A. No.  
9 Q. Do you know anything about her  
10 experience?  
11 A. Only what I've read in her  
12 declaration.  
13 Q. Have you done any due diligence to  
14 try to ascertain Ms. Pearson's qualifications  
15 to offer expert testimony?  
16 A. I don't regard that as part of due  
17 diligence. I have no reason to ascertain her  
18 qualifications.  
19 Q. Okay. And so at the time you  
20 prepared the declaration you reviewed her  
21 declaration as well, correct?  
22 A. Correct.  
23 Q. And the only portion of her  
24 declaration that you chose to comment on are  
25 the seven paragraphs from 69 to 76, correct?

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1 A. Henderson  
2 MR. McDONALD: Object to the form.  
3 A. Yes.  
4 Q. Okay. This is the section, from 29  
5 to 36, this is the section of your declaration  
6 where you put pen to paper to describe your  
7 views of paragraph 69 to 76 of Ms. Pearson's  
8 deposition, correct?  
9 A. Yes.  
10 Q. Declaration. Okay. So let's go  
11 through them one at a time.  
12 A. Okay.  
13 Q. In paragraph 30 you call her  
14 criticism of Mr. Robinson and Mr. Cowan as set  
15 forth in paragraph 70 of her declaration as  
16 misguided. Do you see that?  
17 A. I see that.  
18 Q. And the criticism in particular is  
19 the fault that I guess you interpreted in  
20 paragraph 70 for, quote, "failing to identify  
21 the key differences between Cayman insolvency  
22 proceedings and a solvent court supervisory  
23 winding up." Do I have that right?  
24 A. Yes.  
25 Q. You would agree that there are key

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1 A. Henderson  
2 differences between Cayman insolvency  
3 proceedings and a solvent court supervised  
4 winding up, correct?  
5 A. No.  
6 MR. McDONALD: Object to the form.  
7 (Discussion off the record.)  
8 MR. McDONALD: Could you re-ask the  
9 question?  
10 MR. MORRIS: Sure.  
11 Q. We've spent time today,  
12 Mr. Henderson, talking about the differences  
13 between a winding up proceeding that involves  
14 a solvent entity and winding up proceedings  
15 that involve entities that are either  
16 insolvent or of doubtful solvency, right?  
17 A. There are differences, but it's all  
18 one type of proceeding. It's a winding up  
19 proceeding. And that's where Ms. Pearson and  
20 I differ.  
21 (Pause in proceedings.)  
22 BY MR. MORRIS:  
23 Q. Okay. Are you ready,  
24 Mr. Henderson?  
25 A. Yes.

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133-136

Page 133

1 A. Henderson  
2 Q. So you agree that creditors of a  
3 solvent entity have different rights than  
4 creditors of an insolvent entity or an entity  
5 that is of doubtful solvency as part of the  
6 Cayman Island winding up proceeding scheme,  
7 right?  
8 A. Yes.  
9 Q. Okay. Where you differ with  
10 Ms. Pearson is that you believe those  
11 differences are irrelevant because in your  
12 opinion whether the company is solvent or  
13 insolvent or of doubtful solvency, it's all  
14 under the winding up umbrella, whereas she  
15 believes the differences are important, is  
16 that fair?  
17 A. Not entirely, no.  
18 Q. Tell me where I got it wrong.  
19 A. I don't think they're irrelevant.  
20 She seems to believe that there are two  
21 different types of proceedings, one involving  
22 an insolvent entity and one involving a  
23 solvent entity.  
24 I believe that there's just one  
25 type of proceeding, that is to say a winding

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1 A. Henderson  
2 up proceeding, and the subject matter of that  
3 winding up proceeding may be in some cases a  
4 solvent entity and in other cases an insolvent  
5 entity.  
6 Q. So in your view they're all winding  
7 up proceedings?  
8 A. Correct.  
9 Q. And she's focused on the  
10 differences of the rules that apply, depending  
11 on whether or not the entity is solvent,  
12 insolvent or of doubtful solvency, is that  
13 fair?  
14 A. She's focused on them, but beyond  
15 that she seems to feel that the differences  
16 are so stark that there are two different  
17 types of proceedings. One for solvency -- one  
18 for solvent entities and one for insolvent  
19 entities. I don't see it that way.  
20 Q. There are different rules that  
21 apply depending --  
22 A. Yes.  
23 Q. -- on whether an entity is solvent  
24 or insolvent, is that fair?  
25 A. There are indeed -- yes.

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1 A. Henderson  
2 Q. And do you have any reason to  
3 believe that the only point she's making is  
4 that different rules apply depending on  
5 whether the entity is solvent versus  
6 insolvent?  
7 MR. McDONALD: Objection to form.  
8 A. I can only reply with my own  
9 interpretation of the point she's making.  
10 Q. Okay. All right. Turning to  
11 paragraph 31.  
12 A. Yes.  
13 Q. She's right, is she not, that  
14 creditors of a solvent entity in a winding up  
15 proceeding in the Cayman Islands are not going  
16 to get paid on a pari passu basis, correct?  
17 A. That is correct.  
18 Q. Okay?  
19 MR. McDONALD: Object to the form  
20 of the question.  
21 Q. So what's the criticism that you're  
22 identifying in paragraph 71? I'm not sure  
23 that I follow.  
24 A. I think I'm simply reiterating that  
25 in my view there's just one type of process,

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1 A. Henderson  
2 the winding up process.  
3 Q. Okay. So in your view there's one  
4 process, it's the winding up --  
5 A. Yes.  
6 Q. -- proceeding?  
7 A. You could take an analogy to  
8 criminal proceedings. A criminal proceeding  
9 may involve burglary or it may involve murder.  
10 That is the subject matter of the proceeding.  
11 But there's only one type of proceeding.  
12 Q. Okay.  
13 A. That's the way I view winding up  
14 proceedings. Beyond that, I think that's the  
15 way the bar and the bench views winding up  
16 proceedings.  
17 I've acted as chief justice on a  
18 number of occasions. If I had on one of those  
19 occasions asked the court administrator to  
20 give me a list of all of the types of  
21 proceedings in the court and the number of  
22 each, that list I expect would include a line  
23 item for winding up proceedings. It wouldn't  
24 include two line items, one for solvency  
25 proceedings and one for insolvency

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1 A. Henderson  
2 proceedings. That's the difference.  
3 Q. But you do understand, as you set  
4 forth in paragraph 14 of your declaration,  
5 that one of the things the Court in New York  
6 is going to want to know is whether the  
7 proceeding is not a winding up proceeding, but  
8 whether the proceeding is an insolvency  
9 proceeding or a proceeding to adjust debts,  
10 right?  
11 A. Yeah, I'm aware of the definition  
12 that the Court in New York is considering.  
13 Q. And in your expert opinion, are the  
14 distinctions that Ms. Pearson is drawing  
15 relevant to the question of whether or not the  
16 proceeding is an insolvency proceeding or a  
17 proceeding for the adjustment of debts?  
18 A. I think what she's saying is  
19 relevant. I think it's wrong.  
20 Q. And you think it's wrong because  
21 whether the entity is solvent or insolvent or  
22 of doubtful solvency, it falls under the  
23 umbrella of the Winding Up Rules as we've  
24 defined them, correct?  
25 A. Yes. It's a winding up proceeding.

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1 A. Henderson  
2 It's one type of proceeding.  
3 Q. Okay. But whether it's a winding  
4 up proceeding --  
5 MR. MORRIS: Withdrawn. I'll just  
6 leave it at that.  
7 Q. In paragraph 32 you note that  
8 Ms. Pearson has taken issue with  
9 Mr. Robinson's statement, that quote, "all  
10 major stakeholders are actively  
11 participating," and she asserts that creditors  
12 are, quote, "barred as a matter of law from  
13 participating."  
14 Do you see that?  
15 A. Yes, I do.  
16 Q. Okay. So let's take this in  
17 pieces. Do you have any basis to believe that  
18 Mr. Robinson's statement that, quote, "all  
19 major stakeholders are actively participating"  
20 is true?  
21 A. Well, I don't know in the  
22 individual case, being the Ascentra case,  
23 what's happening. But what I'm attempting to  
24 say, perhaps imperfectly, is that from the  
25 Court's point of view, the creditors remain

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1 A. Henderson  
2 stakeholders even though the liquidators  
3 believe the company will prove to be solvent.  
4 They're stakeholders in the sense  
5 that the Court would want to be assured that  
6 they are treated fairly and properly  
7 throughout the process. It doesn't mean that  
8 they are on the same level as the  
9 shareholders. But they are still  
10 stakeholders.  
11 Q. But in this particular case, if we  
12 could just focus on Ascentra, you don't know  
13 if Ascentra has creditors, correct?  
14 A. No, I don't.  
15 Q. And you don't know if Ascentra has  
16 creditors, whether they're actively  
17 participating in the winding up proceeding,  
18 correct?  
19 A. I don't know what they're doing or  
20 not doing.  
21 Q. Okay. So you don't have any reason  
22 to validate Mr. Robinson's statement that,  
23 quote, "all major stakeholder are actively  
24 participating," correct?  
25 MR. McDONALD: Objection to form.

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1 A. Henderson  
2 A. I can't validate that statement.  
3 I'm directing my mind more to the question of  
4 who are the stakeholders.  
5 Q. Okay. So you're talking general,  
6 but those general --  
7 A. I'm talking general.  
8 Q. Okay. And so those general  
9 concepts -- you're not offering an opinion as  
10 to whether those general concepts apply to the  
11 Ascentra case because you don't even know if  
12 there are creditors, is that fair?  
13 A. That is a fair statement.  
14 Q. Okay. The next portion of the  
15 sentence refers to Ms. Pearson's assertion  
16 that, quote, "the creditors are barred as a  
17 matter of law from participating."  
18 A. Yes.  
19 Q. And we've looked at a lot of the  
20 provisions of the winding up laws, is that  
21 fair?  
22 A. We've looked at some things, yes.  
23 Q. Okay. And I'll ask you now: Can  
24 you identify any rule in the Winding Up Rules,  
25 or any section or provision of Part V of the



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141-144

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1 A. Henderson  
2 Companies Act that gives creditors of a  
3 solvent entity a right to participate in the  
4 winding up proceeding?  
5 A. Well, again, we come back to the  
6 supervisory jurisdiction of the Court. The  
7 Court has an obligation to ensure that its  
8 agents, the JOLs, are acting appropriately,  
9 competently, fairly, et cetera, and the Court  
10 cannot do that without entertaining complaints  
11 from all those who are involved, which could  
12 include a creditor. Even though it's a  
13 solvent entity, if a creditor were to write to  
14 the Court, for example, and say I submitted --  
15 we submitted our invoice four months ago, it  
16 should have been paid within 30 days, it was  
17 not, the liquidators will not tell me why they  
18 have not paid it, can you help.  
19 I would either set the matter down  
20 to be addressed at the next interlocutory  
21 application in the case or I might even call  
22 in the liquidators and ask them. Because I'm  
23 supervising.  
24 Q. And that opinion that you just  
25 articulated is an opinion that emanates from

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1 A. Henderson  
2 the equitable powers of the Court, is that  
3 fair? Is didn't emanate from any particular  
4 rule, is that right?  
5 MR. McDONALD: Objection to form.  
6 A. I'm sure there's something in the  
7 Companies Act.  
8 MR. McDONALD: Take a moment. If  
9 you want to look through it, take a  
10 moment. You don't have to rush.  
11 A. I mean, the application that was  
12 made in this case as in all similar cases is  
13 for an order that the liquidation continue  
14 under the supervision of the Court.  
15 Q. Correct.  
16 A. So the Court is mandated to  
17 supervise.  
18 Q. Okay. Anything else?  
19 A. That's the way it's always been.  
20 Q. Okay.  
21 A. Sometimes statutes don't set out  
22 bedrock principles because they're deemed to  
23 be so obvious that that's unnecessary.  
24 Q. All right. As opposed -- I want to  
25 distinguish the court's supervisory role as

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1 A. Henderson  
2 you've described it from actual rights that  
3 creditors have.  
4 A. Yes. That's an important  
5 distinction.  
6 Q. Okay. So other than the right to  
7 get paid in the ordinary course, can you  
8 identify any right that a creditor or the body  
9 of creditors has in a winding up proceeding  
10 involving a solvent entity?  
11 A. There's probably one or two. I  
12 would have to go through the law and the rules  
13 to identify them. For the most part they  
14 don't have rights, because it's a solvent  
15 entity. They have a broad right to be treated  
16 fairly by the JOLs, and a right, as I've been  
17 at pains to express, to complain to the Court  
18 if they are not treated fairly.  
19 Q. In paragraph 33 you quote from  
20 Ms. Pearson's declaration where she says that,  
21 quote, "a solvent supervised winding up is  
22 conducted for the benefit of the shareholders,  
23 not the creditors."  
24 And you acknowledge that this is,  
25 quote, "largely true."

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1 A. Henderson  
2 A. Correct.  
3 Q. Okay. The only quibble that you  
4 have with her opinion in that regard is that  
5 creditors benefit by having the liquidators  
6 comply with the law that says they must pay  
7 creditors in the ordinary course?  
8 A. Yes.  
9 Q. Okay.  
10 A. And that they may in some cases  
11 have to liquidate assets to do that.  
12 Q. A solvent entity that was not  
13 subject to a winding up proceeding would be  
14 legally obligated to pay its debts in the  
15 ordinary course, isn't that right?  
16 A. Yes.  
17 Q. So that from the creditors'  
18 perspective there is no difference when  
19 dealing with a solvent entity, whether it's in  
20 a winding up proceeding or not in a winding up  
21 proceeding, is that fair?  
22 A. Their right to be paid remains the  
23 same.  
24 Q. Thank you.  
25 A. The practicality of it may differ.

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1 A. Henderson  
2 Often these entities, even though solvent, are  
3 not being managed properly. The liquidators  
4 step in and hopefully and presumably bring a  
5 higher level of organization to the management  
6 of it.  
7 Q. Looking at paragraph 34.  
8 A. Yes.  
9 Q. Are you disagreeing with anything  
10 Ms. Pearson said in paragraph 74 or are you  
11 just putting a little -- well, I'll just leave  
12 it at that.  
13 Is there a disagreement that's  
14 identified in paragraph 74 or a criticism?  
15 A. I'm not sure if it's a  
16 disagreement. I'm pointing out, though,  
17 that -- to quote myself, "if a serious  
18 challenge were brought, I expect the Court  
19 would listen to the submission (probably with  
20 a time limit) and give a direction to the  
21 liquidators if fairness required it. The  
22 rules of standing must (in winding up  
23 proceedings) be enforced with a degree of  
24 flexibility; a judge has a discretion to  
25 listen to a creditor even though that creditor

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1 A. Henderson  
2 has no right to insist on being heard."  
3 I'm just making that point.  
4 Q. Okay, fair enough.  
5 And then finally in paragraph 35  
6 you take strong exception to the charge in  
7 paragraph 75 that Mr. Cowan and Mr. Robinson  
8 didn't provide the New York court with, quote,  
9 a fair representation of the nature of a  
10 supervised solvent winding up, have I read  
11 that correctly?  
12 A. Yes.  
13 Q. You've got the Cowan and Robinson  
14 declarations in front of you.  
15 A. Mm-hmm.  
16 Q. I am going to grab a cup of coffee.  
17 I would ask you to take a look at them and  
18 tell me where in those declarations either  
19 declarant describes in any way at all the  
20 nature of a supervised solvent winding up?  
21 A. Okay. I'll have a look.  
22 MR. McDONALD: Which one do you  
23 have, Cowan or --  
24 THE WITNESS: I have the Robinson  
25 declaration in front of me.

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1 A. Henderson  
2 MR. MORRIS: Can we have him look  
3 at the exhibit and not your copy?  
4 MR. McDONALD: He wanted to make a  
5 mark for --  
6 MR. MORRIS: He can mark it on  
7 the --  
8 MR. McDONALD: I don't want him  
9 marking the official --  
10 MR. MORRIS: He's not going to mark  
11 yours. Unless we're going to mark that  
12 as an exhibit.  
13 A. Is this the official exhibit or is  
14 this just a copy?  
15 Q. Yes, the one with the yellow. If  
16 you want to mark it, you can mark.  
17 MR. MORRIS: I'm not asking him to  
18 mark anything, but if he prefers to do  
19 that, he's got to do that on the exhibit  
20 because that's got to go into court.  
21 (The witness complied.)  
22 A. Okay. Should I answer?  
23 Q. Yes, please. Can you identify  
24 every place in Mr. Robinson's declaration  
25 where you believe he fairly represented to the

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1 A. Henderson  
2 New York court the nature of the supervised  
3 solvent winding up?  
4 A. I may not be able to identify every  
5 place, but I'll identify the --  
6 Q. Sure.  
7 A. -- main places that appear to me.  
8 Paragraph 24.  
9 Q. Okay.  
10 A. He makes the important point that  
11 Ascentra's liquidation is under the Cayman  
12 court's supervision. So that's the most  
13 critical point.  
14 Q. Okay. Can I stop you there for a  
15 second?  
16 A. Yes.  
17 Q. And that would be true regardless  
18 of whether the entity was solvent, insolvent  
19 or of doubtful solvency, correct?  
20 A. Yes. Absolutely.  
21 Q. So that's not a representation of  
22 the nature of a supervised solvent winding up,  
23 correct?  
24 A. Well, it doesn't address a rule  
25 that applies only to a solvent entity.

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149-152

Page 149

1 A. Henderson  
2 Q. Right. That's really what I think  
3 Ms. Pearson was focused on.  
4 MR. McDONALD: Objection to form.  
5 Q. Well, continue. I don't mean to  
6 interrupt. Is there any other section or --  
7 A. I'll just go through them.  
8 Q. Sure.  
9 A. In paragraph 27 he says, "all major  
10 stakeholders are actively participating."  
11 Q. Right.  
12 A. I take that to mean that their  
13 interests are being considered in some manner.  
14 I anticipate that most disputes  
15 among the beneficial holders of Ascentra's  
16 equity will be resolved by the Grand Court."  
17 I presume that to be an important  
18 sentence.  
19 And in paragraph 29 he gives us a  
20 list of things that have been done since the  
21 supervision order was made.  
22 In paragraph 32 he talks about  
23 imposition of the automatic stay will prevent  
24 creditors from pursuing extrajudicial  
25 remedies. That's an important point that the

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1 A. Henderson  
2 court would want to know about I think, the  
3 U.S. court.  
4 "And will ensure that the assets  
5 are preserved for the benefit of all  
6 stakeholders."  
7 Q. Where is that?  
8 A. It's still paragraph 32, right at  
9 the end. The last sentence.  
10 Q. Got it. Thank you.  
11 A. It's a general statement. In  
12 paragraph 40: "As liquidators we have  
13 displaced the prior board of directors of  
14 Ascentra."  
15 That's an important concept. The  
16 liquidators step into the shoes of the  
17 directors and enjoy all of the powers, and  
18 most of the obligations that the directors  
19 previously had. Liquidators are fiduciaries.  
20 Paragraph 41, talking about the  
21 requisite notices and filings have been done.  
22 Arranged for the transfer of the books and  
23 records.  
24 Paragraph 42, Ascentra's nerve  
25 center has been the Cayman Islands.

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1 A. Henderson  
2 I think it covers the ground in  
3 general terms.  
4 Q. Okay. So going back to your  
5 declaration --  
6 A. Yes.  
7 Q. -- the quote that you included in  
8 paragraph 35 is the quote that you take strong  
9 exception to, and that is the statement that  
10 Ms. Pearson didn't believe Mr. Cowan or  
11 Mr. Robinson provided the Court with, quote,  
12 "a fair representation of the nature of a  
13 supervised solvent winding up." Do you see  
14 that?  
15 A. I see that.  
16 Q. Okay. Did you see anywhere in  
17 Mr. Robinson's declaration where he disclosed  
18 to the New York court that creditors would get  
19 paid in the ordinary course?  
20 A. Not expressly, no.  
21 Q. And that's a concept that is unique  
22 to a winding up proceeding of a solvent  
23 entity, correct?  
24 A. Yes. Yes, that's true.  
25 Q. Okay. Did you see anywhere in

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1 A. Henderson  
2 Mr. Robinson's declaration where he disclosed  
3 to the New York court that a liquidation  
4 committee had been appointed that was  
5 comprised as it was required to be of only  
6 contributories?  
7 A. I don't recall seeing that.  
8 Q. But that's a rule in the Cayman  
9 Islands that applies only to winding up  
10 proceedings of solvent entities, correct?  
11 A. That is correct.  
12 Q. Okay. Did you see anywhere in  
13 Mr. Robinson's declaration where he disclosed  
14 to the New York court that creditors could not  
15 participate in duly convened meetings that are  
16 conducted by the joint official liquidators?  
17 A. No, he doesn't address that I don't  
18 think.  
19 Q. And that's a rule that applies only  
20 to winding up proceedings involving solvent  
21 entities, correct?  
22 A. Yes.  
23 Q. Did you see anywhere in  
24 Mr. Robinson's declaration where he discloses  
25 to the New York court that creditors have no

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1 A. Henderson  
2 right to file a sanction application in the  
3 Ascentra bankruptcy?  
4 A. No, I don't think he mentioned  
5 that.  
6 Q. And that's a concept, again, that's  
7 unique to a winding up proceeding involving a  
8 solvent entity, correct?  
9 A. Yes.  
10 Q. Did you see anywhere in  
11 Mr. Robinson's declaration where he disclosed  
12 to the New York court that creditors have no  
13 consent rights as to whether or not to use  
14 estate expenses to fund the liquidators'  
15 investigations?  
16 A. He didn't mention that.  
17 Q. And that's a concept that is unique  
18 to a winding up proceeding involving a solvent  
19 entity, correct?  
20 A. Yes.  
21 Q. And now let's look at the items  
22 that he did mention. Turning to paragraph 27.  
23 You focused on the first two sentences. And I  
24 would ask you, sir, if anything in those two  
25 sentences would have caused the New York court

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1 A. Henderson  
2 to believe that the proceeding in the Cayman  
3 Islands involved one of a solvent entity?  
4 MR. McDONALD: Objection to form.  
5 A. I don't know to what extent -- what  
6 sort of inferences --  
7 MR. MORRIS: You know what? I'll  
8 withdraw the question. That's a fair  
9 objection. I am going to ask you what  
10 you think.  
11 Q. The statements that are in those  
12 first two sentences would apply to any winding  
13 up proceeding, isn't that fair?  
14 A. The second sentence talking about  
15 disputes between the beneficial holders of  
16 equity hints at the fact that this is a  
17 solvent winding up.  
18 Q. But if you weren't an expert in  
19 Cayman Islands law you would -- would you  
20 think you would have any reason to believe  
21 that? You know that only --  
22 MR. MORRIS: Withdrawn.  
23 Q. You know that or you believe that  
24 only because you're an expert, right?  
25 A. I think you would have to be an

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1 A. Henderson  
2 expert in bankruptcy or Cayman Islands law.  
3 Q. Okay. Let's go --  
4 A. But I take it that His Honor will  
5 be that expert.  
6 Q. Right. I think that's why he wants  
7 to hear from you, actually.  
8 A. That's right.  
9 Q. Go to paragraph 29. You pointed to  
10 that paragraph as one that caused you to take  
11 strong exceptions to the statement made in  
12 paragraph 75.  
13 A. He's setting out what he did.  
14 Q. Yes. Is there anything in  
15 paragraph 29 that is unique to a winding up  
16 proceeding involving a solvent debtor?  
17 MR. MORRIS: Withdrawn.  
18 Q. Is there anything in paragraph 29  
19 that is unique to a winding up proceeding  
20 involving a solvent entity?  
21 A. No.  
22 Q. In fact, if you look at D --  
23 A. G?  
24 Q. D, as in David.  
25 A. Oh, D. Yeah.

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1 A. Henderson  
2 Q. That's kind of misleading, isn't  
3 it?  
4 MR. McDONALD: Objection to form.  
5 A. I don't know that it's misleading.  
6 It's non-specific. It doesn't say he wrote  
7 just to the shareholders.  
8 Q. But in fact, given the proceeding  
9 in the Cayman Islands involves a solvent  
10 entity, he would have only written to  
11 contributories about constituting a  
12 liquidation committee, correct?  
13 A. That is correct.  
14 Q. Okay. He wouldn't have written to  
15 stakeholders, if you define stakeholders to  
16 include --  
17 A. No, he would have written to --  
18 sorry. Go ahead.  
19 Q. He wouldn't have written to  
20 stakeholders -- if you define stakeholders to  
21 include contributories and creditors, he never  
22 would have written to, quote, stakeholders  
23 about constituting a liquidation committee,  
24 right?  
25 A. He didn't write to all



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1 A. Henderson  
2 stakeholders. He wrote to one subset of them.  
3 Q. And which subset was that?  
4 A. Well, the shareholders.  
5 Q. And you would never know that the  
6 way subpart D is crafted, correct?  
7 A. I don't think you would know it,  
8 no.  
9 Q. You would have to be an expert in  
10 Cayman Islands law, right?  
11 A. I guess, yeah.  
12 Q. Right? You would have to be an  
13 expert in Cayman Islands law to know that only  
14 contributories would participate in a  
15 liquidation committee involving a solvent  
16 entity, correct?  
17 MR. McDONALD: Objection to form.  
18 A. I suppose so.  
19 Q. Yes. Let's go to the end of  
20 paragraph 32. You referred to the imposition  
21 of the automatic stay as something --  
22 A. Oh, yes.  
23 Q. -- something you believed the  
24 New York court should know, right?  
25 A. Yes.

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1 A. Henderson  
2 Q. Does the automatic stay apply to  
3 all winding up proceedings?  
4 A. I don't know. I would have to -- I  
5 would have to dig into the legislation.  
6 Q. Is there anything about that  
7 sentence that you have cited to, that you  
8 believe fairly puts the reader on notice that  
9 the automatic stay applies to solvent  
10 entities?  
11 MR. McDONALD: Objection to form.  
12 A. No, I'm just pointing out that that  
13 sentence would probably be important to the  
14 New York judge.  
15 Q. Okay. You're not pointing to that  
16 sentence as a statement that discloses that  
17 the proceeding in the Cayman Islands involves  
18 a solvent entity, correct?  
19 A. Yeah. Correct.  
20 Q. Okay. And let's go to paragraph  
21 40. You refer to the first sentence  
22 concerning the displacement of the board?  
23 A. Yes.  
24 Q. And would the board be displaced in  
25 any winding up proceeding regardless of

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1 A. Henderson  
2 whether it was one involving a solvent,  
3 insolvent or an entity of doubtful solvency?  
4 A. Yes.  
5 Q. So there's nothing about the first  
6 sentence of paragraph 40 that would alert the  
7 reader to the fact that the Cayman proceeding  
8 involved a solvent entity, is that fair?  
9 A. Nothing about that sentence, no.  
10 Q. Okay. The same questions with  
11 respect to the first sentence of paragraph 40:  
12 The requisite notices and filings have been  
13 filed and published.  
14 Do you see that?  
15 A. I'm sorry. What is the number?  
16 Q. Forty-one?  
17 MR. McDONALD: You said 40.  
18 MR. MORRIS: Yeah, my mistake.  
19 A. I see. Yes, I see that.  
20 Q. That's also a general statement  
21 that would apply to any winding up proceeding,  
22 is that fair?  
23 A. Mm-hmm, yes.  
24 Q. So there's nothing in that  
25 statement that you believe, based on your

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1 A. Henderson  
2 experience, would alert a non-Cayman Islands  
3 expert to the fact that the winding up  
4 proceeding involved a solvent entity, correct?  
5 A. Yes. True.  
6 Q. Fair? Okay. Let's do the same  
7 thing now with Mr. Cowan's declaration. You  
8 know, before we do that, let's just finish  
9 this up. Going back to 35 of your  
10 declaration.  
11 A. Okay.  
12 Q. Do you still take -- having  
13 reviewed Mr. Robinson's declaration and having  
14 discussed the provisions that you've  
15 identified, do you still take strong exception  
16 to Ms. Pearson's view that Mr. Robinson did  
17 not provide the New York court with a fair  
18 representation of the nature of a supervised  
19 solvent winding up?  
20 A. Well, I take her -- I take her view  
21 to be essentially that Messrs. Cowan and  
22 Robinson deliberately or intentionally  
23 misrepresented the nature of the proceeding to  
24 the New York court. I just don't see that to  
25 be the case.

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1 A. Henderson  
2 Q. Okay. And if you take out the  
3 pejorative language that you have used,  
4 deliberately or intentionally, do you take  
5 issue with -- let me ask you this question.  
6 Do you believe, having reviewed  
7 Mr. Robinson's declaration, that it fairly  
8 represented to the New York court the nature  
9 of the supervised solvent winding up  
10 proceeding that's occurring in the Cayman  
11 Islands?  
12 A. I believe that it made no  
13 misrepresentation of the situation.  
14 Q. I appreciate that.  
15 A. It could have gone farther, in  
16 terms of describing the process. I don't know  
17 if the New York court wants that sort of thing  
18 or not. But I do not believe that it  
19 misrepresented the situation.  
20 Q. Do you believe it fairly  
21 represented the nature of a supervised solvent  
22 winding up?  
23 A. It fairly represented the nature of  
24 the winding up.  
25 Q. Thank you. And I am going to ask

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1 A. Henderson  
2 you just to listen carefully to my question.  
3 Because it included the word "solvent."  
4 Having reviewed -- let me ask the  
5 question.  
6 Having reviewed Mr. Robinson's  
7 declaration, do you, as a former judge and an  
8 expert in Cayman Islands law, have the opinion  
9 that Mr. Robinson fairly represented to the  
10 New York court the nature of a supervised  
11 solvent winding up?  
12 A. Well, he doesn't say a lot about  
13 the solvent aspect. But I think that his  
14 affidavit is fair. It's not misleading.  
15 Q. Okay. Let's go to Mr. Cowan's  
16 declaration.  
17 A. Yes.  
18 Q. And why don't you take the time  
19 that you need to review it and identify any  
20 statement or disclosure in that declaration  
21 that you believe contains a fair  
22 representation of the nature of a supervised  
23 solvent winding up?  
24 A. Well, his declaration is much  
25 shorter. It's really supplementary to what

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1 A. Henderson  
2 Mr. Robinson has said, I guess.  
3 (The witness complied.)  
4 A. Well, on my reading of Mr. Cowan's  
5 declaration he doesn't really address the  
6 distinction between solvent and insolvent  
7 entities. He doesn't address it.  
8 Q. So is it fair to say that having  
9 reviewed the declaration you didn't see  
10 anything in Mr. Cowan's declaration that  
11 alerted you to the fact that the Cayman  
12 proceeding was one involving a solvent entity,  
13 correct?  
14 A. There was nothing in Mr. Cowan's  
15 declaration. There was something in  
16 Mr. Robinson's declaration that alerted me to  
17 that.  
18 Q. And what is that? Because I'm  
19 happy to go back there.  
20 A. Yeah, it was his assertion that  
21 there were some \$200 million in assets.  
22 Q. Right. That's the paragraph 17 and  
23 18 that you referred to in your declaration,  
24 in paragraph 36?  
25 A. I referred to it in my declaration.

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1 A. Henderson  
2 Q. Yes. Anything else?  
3 A. Well, you weigh that against what  
4 he said in paragraph -- his paragraph 18,  
5 "Ascentra's main liabilities as of December  
6 31, 2021, which is a year later, include the  
7 costs incurred by the liquidators," which I  
8 know from experience would be probably in the  
9 seven figures by then. "And certain ordinary  
10 course operating expenses for storage and  
11 maintenance of Ascentra's information," which  
12 is going to be -- certainly not going to be  
13 anything approaching \$200 million.  
14 Q. And what does the last sentence of  
15 paragraph 18 say?  
16 A. Paragraph 18?  
17 Q. Mm-hmm.  
18 A. Yeah, "may have other contingent  
19 liabilities that my team and are I  
20 investigating."  
21 Q. And do you have any idea where that  
22 investigation lies today?  
23 A. No.  
24 Q. Do you have any idea what  
25 contingent liabilities he referred to there?

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1 A. Henderson  
2 A. No. It appears to be a sort of  
3 throwaway line. I mean, in any liquidation in  
4 the early stages there may be contingent  
5 liabilities that the JOLs don't know about.  
6 Which is a sort of a statement of the obvious.  
7 Q. This may be my last question.  
8 You said I think you reviewed  
9 portions of Ms. Pearson's deposition  
10 transcript, do I have that right?  
11 A. Yes.  
12 Q. Is there anything about that  
13 transcript that alters any of the opinions  
14 that are set forth in your declaration?  
15 A. No. I mean, Ms. Pearson and I are  
16 in agreement on a lot of things. But I still  
17 disagree with her view that there are two  
18 separate and distinct types of proceedings.  
19 One for solvent entities and one for insolvent  
20 entities. I think that's -- to my mind that's  
21 a mischaracterization of the process.  
22 Q. Would it be fair to say that even  
23 though they're both winding up proceedings,  
24 there are certain rules that are different  
25 depending on whether the entity that's subject

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1 A. Henderson  
2 to the winding up proceeding is solvent versus  
3 insolvent or doubtfully insolvent?  
4 MR. McDONALD: Objection to the  
5 form.  
6 A. Yes, there are differences in the  
7 rules. Just as there would be between a  
8 murder case and a rape case.  
9 Q. Right.  
10 Is there anything else that you  
11 recall having an opinion on with respect to  
12 Ms. Pearson's deposition transcript?  
13 A. She doesn't put much emphasis on  
14 the supervisory nature of the process.  
15 Q. Okay. Anything else?  
16 A. Nothing that I recall right now.  
17 MR. MORRIS: Let's just take a very  
18 short break. Let me speak to my boss  
19 here and see if I have anything left.  
20 MR. McDONALD: Okay.  
21 THE WITNESS: And I'm still not  
22 permitted to speak to counsel?  
23 MR. MORRIS: Correct. You're still  
24 under oath.  
25 (Recess from 1:36 to 1:44 p.m.)

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1 A. Henderson  
2 BY MR. MORRIS:  
3 Q. Mr. Henderson, during the break did  
4 you think of anything that you wanted to share  
5 with me in the form of amending, modifying,  
6 changing or supplementing any testimony you've  
7 given today?  
8 A. Well, I could supplement one thing.  
9 Q. Okay.  
10 A. I refreshed my memory on Section 96  
11 of the Act.  
12 Q. Okay. Let me grab it. Hold on one  
13 second.  
14 A. I'll wait.  
15 Q. Okay. What page is it? Do you  
16 have that?  
17 A. Page 78 of the Act.  
18 Q. Got it.  
19 A. Section 96. This is an example of  
20 something that either a creditor or a  
21 contributory may ask for without regard to  
22 whether the entity is thought to be solvent or  
23 insolvent. They may, either a credit or a  
24 contributory may apply to the court for a stay  
25 of proceedings.

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1 A. Henderson  
2 Q. And that rule only applies for the  
3 interim period between the time the winding up  
4 petition is presented and the time that the  
5 winding up order is entered, is that fair?  
6 A. That is correct as a practical  
7 matter. And then in section 97 --  
8 Q. Before we go on, and is it fair to  
9 say that under Cayman Islands law the decision  
10 as to whether or not the entity is solvent,  
11 insolvent or of doubtful solvency is going to  
12 be made only after the winding up order is  
13 entered?  
14 A. Well, the liquidator generally  
15 tries to come to a decision as soon as  
16 possible.  
17 Q. I appreciate that. But is he going  
18 to enter his decision, is he going to --  
19 A. His formal certificate?  
20 Q. Is he going to file his certificate  
21 even before --  
22 MR. MORRIS: Withdrawn. Let me ask  
23 you this.  
24 Q. What is a winding up order?  
25 A. Well, it appoints -- it's an order

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1 A. Henderson  
2 that appoints one or more persons and empowers  
3 them with various rights and certain  
4 obligations for the purpose of liquidating the  
5 assets of the company, distributing the  
6 results appropriately, and ultimately  
7 dissolving the company.  
8 Q. So the winding up order is the  
9 order of the Cayman Islands court that  
10 appoints the official liquidator, or maybe the  
11 provisional liquidator, is that fair? And  
12 sets forth the liquidators scope of duties?  
13 A. An order appointing a provisional  
14 liquidator would not be a winding up order.  
15 Q. Okay. Then I want to make sure I  
16 get this right.  
17 A. Because they're just there to hold  
18 the line.  
19 Q. Okay. But a winding up order then  
20 would be the order pursuant to which the  
21 official liquidators are appointed and the  
22 order would set forth the official  
23 liquidators' duties and responsibilities,  
24 correct?  
25 A. Yes.

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1 A. Henderson  
2 Q. And so a liquidator is not going to  
3 file his solvency certificate until he or she  
4 has been appointed, is that fair?  
5 A. I think in many cases that's true.  
6 The Court may ask -- the Court probably would  
7 ask at the outset, is this a solvent or an  
8 insolvent entity that we're dealing with.  
9 Q. Okay. But the credit --  
10 A. But the certificate would most  
11 likely come later.  
12 Q. And the creditor's rights under  
13 section 96 terminate upon the entry of a  
14 winding up order, correct?  
15 A. Yes, that is correct.  
16 Q. Okay. So now let's go on to the  
17 next provision.  
18 A. Well, the other one is Section 97.  
19 Once the winding up order has been made,  
20 there's the automatic stay.  
21 Q. And that applies --  
22 A. That applies whether the entity's  
23 solvent or insolvent.  
24 Q. Okay. Is there anything else that  
25 you reviewed or want to share with me before

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1 A. Henderson  
2 we close the record --  
3 A. No, there's nothing else I  
4 reviewed.  
5 Q. And do you have any other thoughts  
6 that you want to share in order to modify,  
7 expand, change?  
8 A. No. I think it's all on the  
9 record.  
10 MR. MORRIS: Excellent. I have no  
11 further questions.  
12 MR. McDONALD: Give me a moment,  
13 John?  
14 MR. MORRIS: Sure.  
15 MR. McDONALD: Thank you. I just  
16 need to ask a clarifying question about  
17 his report.  
18 EXAMINATION BY  
19 MR. McDONALD:  
20 Q. Can you open up exhibit 1 to your  
21 report, please?  
22 MR. MORRIS: Give me one second.  
23 Q. And if you could turn to paragraph  
24 31?  
25 A. Thirty-one?

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1 A. Henderson  
2 Q. Yes, of your declaration.  
3 A. Okay.  
4 Q. What do you understand the term  
5 "pari passu" to mean?  
6 A. Well, in this context, I'm not  
7 giving a literal interpretation, but in this  
8 context it means paying out the creditors a  
9 proportion -- the proportion that their debt  
10 bears to the total debt, that dictates the  
11 proportion of the amount for distribution that  
12 they will receive. Did I confuse that?  
13 Q. Slightly. Because you say later  
14 on, "if the liquidator expects the liquidation  
15 to prove solvent, they will pay 100 cents on  
16 the dollar." Do you see that where you said  
17 that?  
18 A. Yes.  
19 Q. So would the creditor be paid in  
20 proportion to the total amount of debt if it  
21 receives 100 cents?  
22 MR. MORRIS: Objection to the form  
23 of the question.  
24 A. No. This sentence that mentions  
25 creditors receiving 100 cents on the dollar



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1 A. Henderson  
2 refers to payments that are made in the  
3 so-called ordinary course. Ordinary course of  
4 business.  
5 Q. But if a creditor receives 100  
6 cents --  
7 A. Yeah. On the dollar, yeah?  
8 Q. -- it has received its equal and  
9 ratable share of --  
10 MR. MORRIS: Objection to the form  
11 of the question.  
12 A. It ceases to become a creditor at  
13 that point, too. Yeah. Yes, it's  
14 received its -- it's received all of its debt.  
15 It's been paid. It's no longer a creditor.  
16 Q. After satisfaction of the claim?  
17 A. Yeah. Once it's been paid, it's no  
18 longer a creditor. Are we at cross purposes?  
19 Q. No.  
20 MR. McDONALD: I have no further  
21 questions. I just wanted to clarify  
22 that.  
23 MR. MORRIS: I have nothing  
24 further. That's fine.  
25 THE WITNESS: Thank you.

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1 A. Henderson  
2 THE COURT REPORTER: Counsel,  
3 you'll read and sign?  
4 MR. McDONALD: Yes.  
5 ---  
6 (Time noted: 1:52 p.m. EDT)  
7  
8  
9 ALEXANDER GRAY HENDERSON  
10  
11 Sworn and subscribed to before  
12 me this \_\_\_\_\_ day  
13 of \_\_\_\_\_, 2023,  
14 in the jurisdiction aforesaid.  
15  
16  
17 NOTARY PUBLIC  
18  
19  
20  
21  
22  
23  
24  
25

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1  
2 C E R T I F I C A T E  
3 STATE OF NEW YORK )  
4 COUNTY OF NEW YORK )  
5 I, FRANK J. BAS, a Certified  
6 Shorthand Reporter and Notary Public within  
7 and for the State of New York, do hereby  
8 certify:  
9 That the witness whose testimony is  
10 hereinbefore set forth, was duly sworn by me  
11 and that such testimony given by the witness  
12 was taken down stenographically by me and then  
13 transcribed.  
14 I further certify that I am not  
15 related by blood or marriage to any of the  
16 parties in this matter and that I am in no way  
17 interested in the outcome of this matter.  
18 That any copy of this transcript  
19 obtained from a source other than the court  
20 reporting firm, including from co-counsel, is  
21 uncertified and may not be used at trial.  
22 IN WITNESS WHEREOF, I have hereunto  
23 set my hand this 28th day of September 2023.  
24 *Frank Bas*  
25 FRANK J. BAS, RPR, CRR

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----- I N D E X -----		
2	WITNESS	EXAMINATION BY
3	ALEXANDER HENDERSON	MR. MORRIS
		MR. McDONALD
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----- EXHIBITS-----		
(Exhibits retained by the court reporter.)		
DEPOSITION		PAGE
7	Henderson Exhibit 1, Declaration of	18
8	Mr. Henderson	
9	Henderson Exhibit 2, Companies	24
	Act	
10	Henderson Exhibit 3, Companies Winding Up	24
11	Rules	
12	Henderson Exhibit 4, CWR Form 15	64
13	Henderson Exhibit 5, CWR Form Number 13	68
14	Henderson Exhibit 6, Declaration of	97
	Mr. Robinson	
15	Henderson Exhibit 7, Declaration of	100
16	Mr. Cowan	
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<p>1 DEPOSITION ERRATA SHEET</p> <p>2 Assignment No. J10291184</p> <p>3 Case Caption: In re Ascentra Holdings, Inc. (In</p> <p>4 Foreign Liquidation)</p> <p>5 DECLARATION UNDER PENALTY OF PERJURY</p> <p>6 I declare under penalty of perjury that I have</p> <p>7 read the entire transcript of my deposition taken in</p> <p>8 the above-captioned matter or the same has been read</p> <p>9 to me, and the same is true and accurate, save and</p> <p>10 except for changes and/or corrections, if any, as</p> <p>11 indicated by me on the DEPOSITION ERRATA SHEET</p> <p>12 hereof, with the understanding that I offer these</p> <p>13 changes as if still under oath.</p> <p>14 Signed on the ____ day of _____</p> <p>15 20__.</p> <p>16 _____</p> <p>17 ALEXANDER GRAY HENDERSON</p> <p>18</p> <p>19 Subscribed and sworn to on the ____ day of</p> <p>20 _____ 20 ____ before me.</p> <p>21 _____</p> <p>22 _____</p> <p>23 Notary Public, in and for the State of</p> <p>24 _____.</p> <p>25 _____</p>	<p>1 DEPOSITION ERRATA PAGE</p> <p>2 Page No. ____ Line No. ____ Change to: _____</p> <p>3 _____</p> <p>4 Reason for change: _____</p> <p>5 Page No. ____ Line No. ____ Change to: _____</p> <p>6 _____</p> <p>7 Reason for change: _____</p> <p>8 Page No. ____ Line No. ____ Change to: _____</p> <p>9 _____</p> <p>10 Reason for change: _____</p> <p>11 Page No. ____ Line No. ____ Change to: _____</p> <p>12 _____</p> <p>13 Reason for change: _____</p> <p>14 Page No. ____ Line No. ____ Change to: _____</p> <p>15 _____</p> <p>16 Reason for change: _____</p> <p>17 Page No. ____ Line No. ____ Change to: _____</p> <p>18 _____</p> <p>19 Reason for change: _____</p> <p>20 Page No. ____ Line No. ____ Change to: _____</p> <p>21 _____</p> <p>22 Reason for change: _____</p> <p>23 _____</p> <p>24 SIGNATURE: _____ DATE: _____</p> <p>25 ALEXANDER GRAY HENDERSON</p>
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ALEXANDER GRAY HENDERSON, KC  
ASCENTRA HOLDINGS, INC.

September 28, 2023  
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1 A. Henderson

2 THE COURT REPORTER: Counsel,  
3 you'll read and sign?

4 MR. McDONALD: Yes.

5 ---

6 (Time noted: 1:52 p.m. EDT)

7  
8 A.G. Henderson

9 ALEXANDER GRAY HENDERSON

10  
11 Sworn and subscribed to before  
12 me this 4 day  
13 of October, 2023,  
14 in the jurisdiction aforesaid.

15  
16 [Signature]  
17 NOTARY PUBLIC

18 **Len de Vries**  
19 Notary Public in and for the Cayman Islands  
20 My commission expires on January 31<sup>st</sup>, 2024  
21  
22  
23  
24  
25

ALEXANDER GRAY HENDERSON, KC  
ASCENTRA HOLDINGS, INC.

September 28, 2023  
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C E R T I F I C A T E

STATE OF NEW YORK )

COUNTY OF NEW YORK )

I, FRANK J. BAS, a Certified  
Shorthand Reporter and Notary Public within  
and for the State of New York, do hereby  
certify:

That the witness whose testimony is  
hereinbefore set forth, was duly sworn by me  
and that such testimony given by the witness  
was taken down stenographically by me and then  
transcribed.

I further certify that I am not  
related by blood or marriage to any of the  
parties in this matter and that I am in no way  
interested in the outcome of this matter.

That any copy of this transcript  
obtained from a source other than the court  
reporting firm, including from co-counsel, is  
uncertified and may not be used at trial.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 28th day of September 2023.

*Frank Bas*

FRANK J. BAS, RPR, CRR



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DEPOSITION ERRATA SHEET

Assignment No. J10291184

Case Caption: In re Ascentra Holdings, Inc. (In  
Foreign Liquidation)

DECLARATION UNDER PENALTY OF PERJURY

I declare under penalty of perjury that I have  
read the entire transcript of my deposition taken in  
the above-captioned matter or the same has been read  
to me, and the same is true and accurate, save and  
except for changes and/or corrections, if any, as  
indicated by me on the DEPOSITION ERRATA SHEET  
hereof, with the understanding that I offer these  
changes as if still under oath.

Signed on the 4<sup>th</sup> day of October  
2023.

A.G. Henderson  
ALEXANDER GRAY HENDERSON

Subscribed and sworn to on the 4 day of  
October 20 23 before me.

[Signature]  
Notary Public, in and for the State of

Cayman Islands  
**Len de Vries**  
Notary Public in and for the Cayman Islands  
My commission expires on January 31<sup>st</sup>, 2024

ALEXANDER GRAY HENDERSON, KC  
ASCENTRA HOLDINGS, INC.

September 28, 2023  
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DEPOSITION ERRATA PAGE

Page No. 39 Line No. 19 Change to: delete " 's "

Reason for change: grammar

Page No. 40 Line No. 3 Change to: "was" to "is"

Reason for change: accuracy

Page No. 43 Line No. 11 Change to: "Court" to "company"

Reason for change: accuracy

Page No. 52 Line No. 22 Change to: delete "they"

Reason for change: grammar

Page No. 75 Line No. 19 Change to: "is" to "was"

Reason for change: accuracy

Page No. 91 Line No. 17 Change to: insert comma

Reason for change: grammar

Page No. 94 Line No. 2 Change to: "ly" to "my"

Reason for change: typo

SIGNATURE: A.G. Henderson DATE: Oct. 4/23

ALEXANDER GRAY HENDERSON

ALEXANDER GRAY HENDERSON, KC  
ASCENTRA HOLDINGS, INC.

September 28, 2023  
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1 DEPOSITION ERRATA PAGE

2 Page No. 120 Line No. 4 Change to: rateable

3 \_\_\_\_\_

4 Reason for change: spelling

5 Page No. 125 Line No. 17 Change to: rateably

6 \_\_\_\_\_

7 Reason for change: spelling

8 Page No. 173 Line No. 9 Change to: rateable

9 \_\_\_\_\_

10 Reason for change: spelling

11 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

12 \_\_\_\_\_

13 Reason for change: \_\_\_\_\_

14 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

15 \_\_\_\_\_

16 Reason for change: \_\_\_\_\_

17 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

18 \_\_\_\_\_

19 Reason for change: \_\_\_\_\_

20 Page No. \_\_\_\_\_ Line No. \_\_\_\_\_ Change to: \_\_\_\_\_

21 \_\_\_\_\_

22 Reason for change: \_\_\_\_\_

23 \_\_\_\_\_

24 SIGNATURE: A.G. Henderson DATE: Oct. 4/23

25 ALEXANDER GRAY HENDERSON



# **EXHIBIT 4**

**IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE**

**[2023] SGCA 32**

Court of Appeal / Civil Appeal No 23 of 2022

Between

- (1) Ascentra Holdings, Inc (in  
official liquidation)
- (2) Chua Suk Lin Ivy
- (3) Graham Robinson

*... Appellants*

And

SPGK Pte Ltd

*... Respondent*

In the matter of Originating Summons No 16 of 2022

Between

- (1) Ascentra Holdings, Inc (In  
Official Liquidation)
- (2) Graham Robinson
- (3) Chua Suk Lin Ivy

*... Applicants*

And

SPGK Pte Ltd

*... Non-party*

---

**JUDGMENT**

---

[Insolvency Law — Cross-border insolvency — Recognition of foreign  
insolvency proceedings — Recognition of foreign solvent liquidation  
proceedings]

**This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.**

**Ascentra Holdings, Inc (in official liquidation) and others  
v  
SPGK Pte Ltd**

**[2023] SGCA 32**

Court of Appeal — Civil Appeal No 23 of 2022  
Sundaresh Menon CJ, Steven Chong JCA and Belinda Ang Saw Ean JCA  
3 August 2023

18 October 2023

Judgment reserved.

**Sundaresh Menon CJ (delivering the judgment of the court):**

**Introduction**

1 This appeal arises from the decision of a High Court judge (the “Judge”) in HC/OS 16/2022 (“OS 16”), which considered whether a voluntary liquidation qualified as a “foreign proceeding” within the meaning of Art 2(h) of the Third Schedule to the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the “IRDA”). The Third Schedule of the IRDA sets out Singapore’s adapted enactment of the Model Law on Cross-Border Insolvency, that was developed by the United Nations Commission on International Trade Law (the “UNCITRAL Model Law”). For convenience, we refer to Singapore’s adaptation of the UNCITRAL Model Law as the “SG Model Law”.

2 The present appeal raises the important question of whether the SG Model Law encompasses within its ambit foreign insolvency, restructuring or



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liquidation proceedings concerning solvent companies. This question must be determined having regard to a range of considerations, including: (a) any modifications which Parliament made to the UNCITRAL Model Law when enacting it as the SG Model Law, and Parliament’s intent in making any such modifications; (b) the approaches adopted by courts in other jurisdictions when interpreting the UNCITRAL Model Law or the corresponding provisions in those jurisdictions; and (c) the broader practical implications that would follow if we were to decide that proceedings involving solvent companies do fall within the scope of the SG Model Law.

## **Facts**

### ***The parties***

3 We begin by recounting the facts. The first appellant is Ascentra Holdings, Inc (in official liquidation) (“Ascentra”). Prior to its liquidation, Ascentra was in the business of selling health and beauty products as well as computer communications software in Hong Kong, Taiwan and Singapore (*Re Ascentra Holdings, Inc (in official liquidation) and others (SPGK Pte Ltd, non-party)*) [2023] SGHC 82 (“GD”) at [5]).

4 The second and third appellants are Ms Chua Suk Lin Ivy (“Ms Chua”) and Mr Graham Robinson (“Mr Robinson”) respectively. They are the joint official liquidators of Ascentra appointed by the Grand Court of the Cayman Islands (the “Cayman Grand Court”) and we refer to them collectively as the “Liquidators” (GD at [6]).

5 The respondent is SPGK Pte Ltd, a company incorporated in Singapore, and a wholly-owned subsidiary of Shang Peng Gao Ke, Inc (“SPGK Cayman”), a company incorporated in the Cayman Islands. The appellants maintain that

*Ascentra Holdings, Inc v SPGK Pte Ltd*

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Ascentra has potential claims against the respondent, SPGK Cayman as well as another company incorporated in Singapore, Scuderia Bianco Pte Ltd (“Scuderia Bianco”) (GD at [8]). In particular, it is alleged that SPGK Cayman owes certain sums of money to Ascentra, some of which is held by the respondent and Scuderia Bianco.

***Background to the dispute***

*Ascentra’s liquidation*

6 Ascentra’s ultimate beneficial shareholders are seven natural persons. From sometime in 2018, a number of disputes arose between these shareholders over the strategic direction of Ascentra’s business (GD at [10]–[11]). On 1 June 2021, Ascentra’s shareholders resolved to place it in voluntary liquidation and to appoint Mr Robinson as the “voluntary liquidator”. On 2 June 2021, Ascentra filed with the Cayman Islands Registrar of Companies, the documents that were required under the Companies Act (2021 Revision) (Cayman Islands) (the “Cayman Act”) to initiate its voluntary liquidation. Ascentra’s voluntary liquidation is deemed to have commenced on 2 June 2021.

7 Pursuant to s 124(1) of the Cayman Act and O 15 r 1 of the Cayman Islands Companies Winding Up Rules 2018 (the “Cayman CWR”), Ascentra’s directors were required to file a declaration of solvency no later than 28 days after the voluntary liquidation had commenced (that is, by 30 June 2021), failing which the liquidator was required to apply to the Cayman Grand Court for an order that the voluntary liquidation continue under the supervision of the court. As Ascentra’s directors failed to file the declaration for undisclosed reasons, Mr Robinson duly presented a petition to the Cayman Grand Court on 2 July 2021 for the liquidation to proceed under court supervision (GD at [12]–[13]).

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8 On 17 September 2021, the Cayman Grand Court allowed Mr Robinson’s petition and ordered, among other things, that:

- (a) the liquidation of Ascentra be continued under the supervision of the Cayman Grand Court pursuant to s 124 of the Cayman Act (the “Supervision Order”); and
- (b) Mr Robinson and Ms Chua be appointed as the joint official liquidators of Ascentra.

*Ascentra’s solvency*

9 On 23 September 2021, the Liquidators filed a certificate in the Cayman Grand Court as to Ascentra’s solvency in the following terms:

**JOINT OFFICIAL LIQUIDATORS’ CERTIFICATE**

Ascentra Holdings, Inc – In Official Liquidation (the  
“Company”)

...

TAKE NOTICE that the Joint Official Liquidators hereby certify that they have determined that the above-named Company should be treated as **solvent**, for the purposes of section 110(4) of the [Cayman Act] and [Cayman CWR] Orders 8 and 9.

AND FURTHER TAKE NOTICE that the Joint Official Liquidators may change their determination from time to time in the light of changes of relevant circumstances and/or their assessment of the Company’s financial position.

[emphasis in original]

10 On 14 October 2021, in a letter addressed to Ascentra’s shareholders, Mr Robinson similarly stated that the Liquidators had determined that Ascentra was solvent.

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*The application in OS 16*

11 On 6 January 2022, the appellants filed OS 16 pursuant to Art 15 of the SG Model Law, seeking the following orders (GD at [15]):

- (a) an order recognising Ascentra’s liquidation in the Cayman Islands (“Ascentra’s Cayman Liquidation”) in Singapore and, by our courts, as a “foreign main proceeding” within the meaning of Art 2(f) of the SG Model Law;
- (b) an order recognising the Liquidators as “foreign representatives” of Ascentra within the meaning of Art 2(i) of the SG Model Law; and
- (c) an order granting the Liquidators such powers in relation to Ascentra’s property and assets “as are available to a liquidator under Singapore insolvency law”.

It is evident that the Liquidators seek these powers with a view to pursuing possible claims against the respondent and/or Scuderia Bianco. The Liquidators’ application is resisted by the respondent (GD at [7]–[9]).

**The decision below**

12 The Judge considered that the only issue arising in OS 16 was whether Ascentra’s Cayman Liquidation had its basis in a law relating to insolvency within the meaning of Art 2(h) of the SG Model Law. The Judge held that Art 2(h) of the SG Model Law had to be interpreted purposively pursuant to s 9A of the Interpretation Act 1965 (2020 Rev Ed) (the “IA”), and applying the approach to interpretation that was formulated in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 (“*Tan Cheng Bock*”) at [37] (the “Purposive Approach”). Specifically, the Judge took the view that the critical words within



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Art 2(h) of the SG Model Law that he had to interpret were “law relating to insolvency”: see GD at [24] and [28].

13 For convenience, we set out Art 2(h) of the SG Model Law here:

**Article 2. Definitions**

For the purposes of this Law —

...

(h) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;

14 The Judge first *separately* interpreted the words “insolvency”, “law” and “relating to” and proceeded in the following manner:

(a) The proper characterisation of a “foreign proceeding” under Art 2(h) of the Model Law would take into account the law of the foreign state. However, there was no material difference between the concept of insolvency under Cayman law as opposed to Singapore law, given the similarity in the language of s 125(2)(c) of the IRDA and its analogue, s 93(c) of the Cayman Act. In any event, as the test for insolvency under Cayman law had not been proved, it was presumed that the test for insolvency under Cayman law was the same as that under Singapore law. Accordingly, “insolvency” for the purposes of Art 2(h) of the SG Model Law referred to a company’s inability to pay debts which had already fallen due or which will fall due within the reasonably near future, following the position set out by this court in *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd (formerly known as Tong Teik Pte Ltd)* [2021] 2 SLR 478 at [56], [65] and [66] (GD at [45]–[52]).

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(b) For the purposes of Art 2(h) of the SG Model Law, “law” encompassed both legislation and judge-made law, and would include the Cayman Act (GD at [55]–[56]).

(c) The appellants’ submission that a law “relating to” insolvency is simply one that is contained within a statute that deals generally with the subject matter of insolvency was rejected. Such an approach subordinated substance to form as any type of proceeding, no matter how far removed that proceeding was from any connection to insolvency, would fall within the scope of Art 2(h) of the SG Model Law as long as it was commenced under a provision contained within a statute that also dealt generally with insolvency (GD at [58]–[63]).

15 The Judge then considered the phrase “under a law relating to insolvency” as a whole and held that the ordinary meaning of that phrase must refer to a body of rules, whether statutory or judge-made, which governs a company that is insolvent. This includes a company which apprehends becoming unable to pay its debts as they fall due in the reasonably near future, and therefore can be said to be in severe financial distress in the present (GD at [64]). The Judge further observed that such an interpretation was consistent with and confirmed by the underlying purpose of the UNCITRAL Model Law (GD at [72]–[79]), as well as the preparatory records and documents relating to the UNCITRAL Model Law such as: (a) various reports and papers of the UNCITRAL Working Group on Insolvency Law (the “Working Group”); (b) *Cross-Border Insolvency: Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency*, 30th Sess, UN Doc A/CN.9/442 (1997) (the “1997 Guide”); and (c) *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, UN Sales No E.05.V.10 (2013) (the “2013 Guide”) (GD at [81]–[99]).

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16 As to the relevant case law, the Judge observed as follows:

(a) The Court of Appeal in *United Securities Sdn Bhd (in receivership and liquidation) and another v United Overseas Bank Ltd* [2021] 2 SLR 950 (“*United Securities*”) had implicitly affirmed in *obiter* that the relevant foreign law under Art 2(h) of the SG Model Law must be one which deals with or addresses insolvency or severe financial distress (GD at [107]).

(b) Under the bankruptcy law of the United States (the “US”), chiefly as reflected in *Re Betcorp Limited (in liquidation)* 400 BR 266 (Nevada US Bankruptcy Court, 2009) (“*Re Betcorp*”), the requirement that a “foreign proceeding” be commenced under a law relating to insolvency or the adjustment of debts does not require the company to be either insolvent or contemplating the adjustment of debt (GD at [124]). In the absence of direct evidence as to what Parliament intended, it could not be said that by adopting the words “adjustment of debt” from Chapter 15 of the Bankruptcy Code 11 USC (US) (1978) (the “US Bankruptcy Code”) in Art 2(h) of the SG Model Law, Parliament thereby intended to endorse the prevailing position under US bankruptcy law (GD at [116]–[117]). Moreover, the US approach has been criticised and should not be followed (GD at [132]–[142]). To the extent that the position under Australian law is similar to US bankruptcy law, it should likewise not be followed (GD at [153]–[159]).

(c) It was held in the decision of the High Court of England and Wales in *Re Sturgeon Central Asia Balanced Fund Ltd (in liquidation) (No 2); Carter v Bailey and another (as foreign representatives of Sturgeon Central Asia Balanced Fund Ltd)* [2020] EWHC 123 (Ch)

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(“*Re Sturgeon*”) that it would be contrary to the UNCITRAL Model Law’s purpose and object to enlarge its scope by interpreting “foreign proceeding” as including proceedings concerning solvent companies and proceedings which may be expected to result in the payment of all creditors in full and produce a surplus for members. *Re Sturgeon* is not an outlier among English cases and should be followed in Singapore (GD at [130] and [143]–[152]).

17 The Judge accordingly held that Ascentra’s Cayman Liquidation is not a “foreign proceeding” within the meaning of Art 2(h) of the SG Model Law, because the legislative “track” under which Ascentra’s liquidation was commenced (that is, s 116(c), which provides that a company may be voluntarily wound up if the company so resolves by special resolution, read with s 124 of the Cayman Act) does not and cannot apply to a company that is insolvent or in severe financial distress (GD at [161] and [165]). The Judge also noted, in any event, that Ascentra is solvent.

### **The parties’ cases on appeal**

#### ***The appellants’ case***

18 In relation to the ordinary meaning of Art 2(h) of the SG Model Law, the appellants argue that the Judge erred in the approach he took in interpreting Art 2(h). By isolating the word “insolvency” and equating its meaning in Art 2(h) with that under s 125(2)(c) of the IRDA, he failed to appreciate that the collection of words “law relating to insolvency or adjustment of debt” is framed broadly and should therefore be interpreted broadly, such that while it would include laws dealing with various issues that arise in a situation where a company is or might be unable to pay its debts, it should not be *confined* to this.

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19 Following from this, the appellants submit that the Judge took an unduly narrow approach by focusing on the specific provisions of the Cayman Act under which Ascentra’s Cayman Liquidation is being conducted (which we will refer to, for convenience, as the “Narrow Approach”). Instead, the correct inquiry is whether Part V of the Cayman Act on “Winding up of Companies and Associations”, which contains those specific provisions as well as other provisions that also cover insolvent companies, is, as a whole, a law relating to insolvency (we refer to this as the “Broad Approach”). The appellants contend that Part V of the Cayman Act (as a whole) is a law relating to insolvency because it contains all the provisions necessary to wind up any company in the Cayman Islands. The appellants thus submit that Ascentra’s Cayman Liquidation, which was conducted pursuant to provisions contained in Part V of the Cayman Act, falls within the ambit of Art 2(h) of the SG Model Law and should therefore be recognised in Singapore as a foreign main proceeding.

20 Relatedly, the appellants submit that the SG Model Law and the extrinsic materials do not impose any requirement for an applicant company to be either insolvent or in severe financial distress for a proceeding involving that company to be regarded as taking place under a “law relating to insolvency” within the meaning of Art 2(h) of the SG Model Law. On the contrary, it is evident from the preparatory material surrounding the UNCITRAL Model Law that the words “law relating to insolvency” were not intended to confine the application of the recognition regime to insolvent or severely financially distressed companies. In oral submissions, counsel for the appellants, Mr Lee Eng Beng SC (“Mr Lee”) also emphasised that the words “or adjustment of debt” were adopted from the US Bankruptcy Code into Art 2(h) of the SG Model Law and that this was done to allow the Singapore courts to recognise proceedings akin to those under Chapter 11 of the US Bankruptcy Code (these



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being corporate reorganisations) which are not limited to insolvent companies. The appellants thus argue that the Judge erred in holding that Ascentra's Cayman Liquidation was not a "foreign proceeding" under Art 2(h) of the SG Model Law on account of Ascentra's apparent solvency.

21 The appellants further highlight that allowing the recognition of proceedings involving solvent companies is consistent with the weight of the authorities in the US, the United Kingdom ("UK") (with the exception of *Re Sturgeon*), Australia and New Zealand. In this regard, the appellants submit that *Re Sturgeon* should not be followed because: (a) it is an outlier even among English cases; (b) in any event, the English cases should be approached with some caution due to differences between the legislative regimes in the UK and Singapore; and (c) the position under US bankruptcy law should be preferred given that Parliament had adopted the definition of "foreign proceeding" in Art 2(h) of the SG Model Law from the US Bankruptcy Code and further, because the preponderance of authorities in various jurisdictions have adopted the US position.

22 In addition, the appellants also submit that the introduction of a requirement of insolvency or severe financial distress would introduce significant uncertainty and complexity into the recognition process and undermine the purpose of the SG Model Law. This is said to follow from the need that would then arise for our court to determine the precise requirements as to insolvency under a foreign law. Mr Lee also suggested in his oral submissions that the threshold for recognition should be a light one, given that the court retains the power to make the order subject to suitable terms, thus enabling the court to avoid any overreach.

*Ascentra Holdings, Inc v SPGK Pte Ltd*

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***The respondent's case***

23 The respondent, on the other hand, submits that Ascentra's Cayman Liquidation does not satisfy the definitional requirements in Art 2(h) of the SG Model Law because it is not a proceeding under a law relating to insolvency, and also because its purpose is not to secure the liquidation of the company within the meaning of Art 2(h). To that end, counsel for the respondent, Mr Balakrishnan Ashok Kumar ("Mr Kumar"), makes the following submissions:

(a) A "foreign proceeding" under Art 2(h) refers only to proceedings involving companies that are insolvent or in severe financial distress. This is confirmed by the context and purpose underlying the SG Model Law, as gleaned from the preamble of the SG Model Law as well as extrinsic material such as the 1997 Guide, the 2013 Guide and the corresponding working papers of the Working Group.

(b) The *UNCITRAL Legislative Guide on Insolvency Law* (2004) (the "Legislative Guide") confirms that the UNCITRAL Model Law was intended to be limited to proceedings involving debtors that are unable to meet their debts as they fall due and hence to be confined to insolvent liquidations.

(c) *Re Sturgeon* was correctly decided by the UK court and is not an outlier among English cases. Moreover, the principles that were applied in *Re Sturgeon* are aligned with the preparatory material pertaining to the UNCITRAL Model Law. The purported concerns over the difficulties which the recognising court would allegedly face in determining the financial status of the company concerned in the relevant foreign proceeding are unfounded, because the recognising

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court would typically rely on the foreign court’s assessment. In any case, it would be obvious in most cases when a company is solvent.

(d) *Re Betcorp* should not be followed as it was wrongly decided and has been criticised. Moreover, in many of the cases where *Re Betcorp* was applied, the recognising court had nonetheless gone on to consider whether the company involved in the relevant foreign proceeding was insolvent or in financial distress. Indeed, even the US courts have acknowledged that the insolvency or financial distress of a company is a relevant consideration in determining whether recognition should be granted.

(e) The approach suggested by the appellants would “open [the] floodgates for recognition and assistance applications”, allow solvent companies to take advantage of the SG Model Law even where its purpose is not engaged, and create potentially absurd outcomes under the SG Model Law.

24 Mr Kumar accordingly contends that Ascentra’s Cayman Liquidation, which is being conducted under a “track for solvent companies” and involves a company that has been solvent at all material times, cannot be regarded as a “foreign proceeding” within the meaning of Art 2(h) of the SG Model Law, and ought not to be recognised under the SG Model Law.

25 The respondent also submits in any event that the Singapore court does not have the requisite jurisdiction to hear and determine the application for recognition of Ascentra’s Cayman Liquidation pursuant to Art 4(2)(a)(ii) of the SG Model Law, because Ascentra allegedly has no property in Singapore. Finally, the respondent argues that even if Ascentra’s Cayman Liquidation was

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to be recognised under the SG Model Law, the discretionary reliefs sought by the appellants ought not be granted, or in any event, any order made by the court should be circumscribed by the imposition of suitable conditions.

### **General principles and issues to be determined**

26 To situate the specific issues arising for our consideration in the proper context, it is apposite to first set out the relevant provisions of the SG Model Law governing the recognition of foreign proceedings in Singapore.

27 Pursuant to Art 15(1) of the SG Model Law, a foreign representative may apply to the court for recognition of the foreign proceeding in which the foreign representative has been appointed. Article 17(1) of the SG Model Law further stipulates circumstances in which a foreign proceeding must be recognised:

#### **Article 17. Decision to recognise a foreign proceeding**

1. Subject to Article 6, a proceeding must be recognised if —
  - (a) it is a foreign proceeding within the meaning of Article 2(h);
  - (b) the person or body applying for recognition is a foreign representative within the meaning of Article 2(i);
  - (c) the application meets the requirements of Article 15(2) and (3); and
  - (d) the application has been submitted to the Court mentioned in Article 4.

28 We set out again Art 2(h) of the SG Model Law, which defines a “foreign proceeding” in the following terms:

#### **Article 2. Definitions**

For the purposes of this Law —

...

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(h) “foreign proceeding” means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;

29 It seems to us that Art 2(h) of the SG Model Law prescribes at least five different and cumulative requirements for a proceeding to qualify as a “foreign proceeding” (see also *United Securities* at [53]):

- (a) First, that proceeding must be collective in nature.
- (b) Second, that proceeding must be a judicial or administrative proceeding in a foreign State.
- (c) Third, that proceeding must be conducted under a law relating to insolvency or adjustment of debt.
- (d) Fourth, the property and affairs of the debtor company must be subject to control or supervision by a foreign court in that proceeding.
- (e) Fifth, that proceeding must be for the purpose of reorganisation or liquidation.

While the Judge proceeded on the basis that only the third requirement was in issue, the respondent takes the position before us that the first and fifth requirements are also unsatisfied.

30 Finally, pursuant to Art 4(2)(a)(ii) of the SG Model Law, the General Division of the High Court in Singapore will have jurisdiction to recognise foreign proceedings under Art 17(1) if the company in question has property situated in Singapore.



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31 In the light of the parties’ submissions and the foregoing statutory provisions, the following issues arise for our consideration:

- (a) whether Ascentra’s Cayman Liquidation is being conducted “under a law relating to insolvency or adjustment of debt” under Art 2(h) of the SG Model Law;
- (b) whether Ascentra’s Cayman Liquidation is a collective proceeding under Art 2(h) of the SG Model Law;
- (c) whether Ascentra’s Cayman Liquidation is being conducted “for the purpose of liquidation or reorganisation” under Art 2(h) of the SG Model Law; and
- (d) whether the Singapore courts have jurisdiction to recognise Ascentra’s Cayman Liquidation under Art 4(2)(a)(ii) of the SG Model Law.

**Whether Ascentra’s Cayman Liquidation is being conducted under a law relating to insolvency or adjustment of debt**

32 Before we set out our analysis on the first issue, we make two preliminary observations on the approach taken by the Judge towards interpreting Art 2(h) of the SG Model Law. First, we note that the Judge focused on the interpretation of the words “under a law relating to insolvency”, and largely excluded consideration of the words “adjustment of debt”. With respect, we disagree with this approach. For reasons we explain in greater detail below, we are satisfied that the inclusion of the words “or adjustment of debt” in Art 2(h) sheds significant light on Parliament’s intention with regard to the ambit of Art 2(h) at least in the context of the SG Model Law. The phrase “under a law relating to insolvency or adjustment of debt” must therefore be interpreted as a collective whole.

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33 Second, both the Judge and the parties dealt, in considerable detail, with the question of whether the Narrow Approach or Broad Approach should be adopted in Singapore, that is to say whether the phrase “law relating to insolvency” in Art 2(*h*) of the SG Model Law refers narrowly to the specific provision(s) under which the foreign proceeding is conducted or more broadly to the general statutory regime or part of the relevant legislation containing those specific provision(s) in addition to others. The key difference between the Narrow Approach and the Broad Approach is that with the latter, it will suffice that the relevant proceeding is conducted under a law which *contains* provisions relating to insolvency or adjustment of debt, even if the specific provisions governing the relevant proceeding do not deal with insolvency or adjustment of debt. Conversely, in the former, the specific provisions pursuant to which the relevant proceeding is being conducted must relate to insolvency or adjustment of debt.

34 In practical terms, the difference between the Broad Approach and the Narrow Approach may be reduced to a more fundamental inquiry: whether the Singapore Parliament intended that the words “under a law relating to insolvency or adjustment of debt” in Art 2(*h*) of the SG Model Law should be limited to laws that are applicable *only* to companies in insolvency or severe financial distress. The point is significant because there is nothing in either the UNCITRAL Model Law or the SG Model Law that expressly defines the recognition regime by reference to the solvency status of the company in question. Instead, the recognition regime is drafted in terms that accord recognition to foreign proceedings by reference to a number of defining characteristics of those proceedings, including the laws under which they are being conducted. If the narrow view were adopted, the consequence would be

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to confine the recognition regime in Singapore to insolvent and/or severely financially distressed companies to the exclusion of solvent companies.

35 This seems somewhat counter-intuitive for two related reasons: first, if that was the intention, it would have been far easier and clearer to achieve that intention by making the solvency status of the company a necessary criterion; and second, the choice of the words “law relating to” seems deliberate and their purport is broad especially when seen in the light of the fact that in many legislative regimes, including ours, and that which applies in the Cayman Islands, laws relating to insolvency will frequently include or overlap with laws relating to the dissolution of companies that may not be insolvent.

36 In that light, we first summarise our conclusion on this issue. In our judgment, Art 2(h) of the SG Model Law should be interpreted broadly to include within its ambit foreign proceedings concerning companies that are neither insolvent nor in severe financial distress. We arrive at this conclusion for a number of reasons:

(a) First, it is evident from the ordinary meaning of the relevant provisions of the SG Model Law that there is no express requirement for a company to be insolvent or in severe financial distress for a proceeding concerning that company to be recognised as a foreign proceeding under the SG Model Law. This is made demonstrably clear by the inclusion of the words “or adjustment of debt” in Art 2(h) as well as the statutory presumption of insolvency in Art 31. Significantly, there is no reference at all in Art 2(h) to the solvency status of the company in question. In our judgment, one is driven to the conclusion that the solvency status of the company is not a relevant consideration both as a matter of the plain

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interpretation of Art 2(*h*), as well as by the correct application of the Purposive Approach.

(b) Second, even if we were to ignore the words “or adjustment of debt” in Art 2(*h*) and assume that Parliament had adopted the UNCITRAL Model Law in its original form, we are not satisfied that the drafters of the UNCITRAL Model Law intended to *exclude* solvent companies from the scope of the UNCITRAL Model Law for the purposes of recognition. The Judge considered that the Broad Approach would undermine the purpose of the UNCITRAL Model Law by bringing proceedings concerning solvent companies within its scope, and accordingly interpreted the phrase “under a law relating to insolvency” as referring to a body of rules which governs a company that is insolvent or in severe financial distress. On that basis, the Judge held that Ascentra’s Cayman Liquidation was not a “foreign proceeding” within the meaning of Art 2(*h*) because the specific provisions under which it was commenced are not provisions that apply to companies that are either insolvent or in severe financial distress. Further, he considered that Ascentra is solvent, which was accepted by the Liquidators (GD at [16]–[19] and [161]–[168]). On the last point, although the appellants submitted in their Supplemental Case that Ascentra was *prima facie* insolvent when the Cayman Grand Court granted the Supervision Order, Mr Lee did not pursue this argument in oral submissions. Even accepting that Ascentra is solvent, it is not at all clear to us how *extending* the scope of Art 2(*h*) to cover proceedings involving solvent companies would undermine the purpose of the SG Model Law.

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(c) Third, we are satisfied that Art 2(*h*) should be interpreted in a way that is broadly harmonious with the approaches adopted in other jurisdictions. The weight of the authorities in other jurisdictions favours the interpretation we take, which would enable the recognition of proceedings concerning solvent companies as foreign main proceedings.

(d) Fourth, the practical concerns that the respondent submits would arise from allowing the recognition of proceedings concerning solvent companies may be easily dealt with.

We elaborate on each of these points.

***Whether the scope of Art 2(h) extends to solvent companies***

*The ordinary meaning of Art 2(h)*

37 We begin our analysis with the ordinary meaning of Art 2(*h*) of the SG Model Law. At the outset, we reiterate that there is nothing in the SG Model Law, whether in Art 2(*h*) or elsewhere, which encompasses a specific requirement that a particular proceeding must involve a company that is insolvent or in severe financial distress to qualify as a “foreign proceeding” within the meaning of Art 2(*h*). On the contrary, Art 2(*h*) has been drafted broadly to refer to proceedings conducted under laws *relating to* insolvency or adjustment of debt (as opposed to, for instance, proceedings conducted under laws that are *applicable only to* companies that are insolvent or in severe financial distress).

38 Further, in considering the terms of Art 2(*h*) of the SG Model Law, it is relevant to consider the UNCITRAL publication, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective*, UN Sales No 23.V.I (2022) (“*The Judicial Perspective*”), which discusses the UNCITRAL Model Law



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from a judge’s perspective with the aim of providing general guidance on the issues that a judge might need to consider in a given case, based on the intentions of the drafters of the UNCITRAL Model Law and the experiences of those who have used it in practice (*The Judicial Perspective* at para 3). The authors of *The Judicial Perspective* expressly recognise that where States have amended the UNCITRAL Model Law to suit local circumstances, different approaches might be required if a judge concludes that the omission or modification of a particular article from the text as enacted necessitates such a course (*The Judicial Perspective* at para 1).

39 In ascertaining Parliament’s intention with regard to the ambit of Art 2(h) of the SG Model Law, it is therefore imperative to note that the UNCITRAL Model Law was not adopted in Singapore without modification. In particular, Art 2(a) of the UNCITRAL Model Law, which corresponds to Art 2(h) of the SG Model Law, defines a “foreign proceeding” as “a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, *pursuant to a law relating to insolvency* in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation” [emphasis added]. When Parliament adopted the UNCITRAL Model Law in the Third Schedule to the IRDA as the SG Model Law, it added the words “or adjustment of debt” to the definition of “foreign proceeding” in Art 2(h). What is significant is that s 101(23) of the US Bankruptcy Code, which is the analogue of Art 2(h) of the SG Model Law, contains the same additional words “or adjustment of debt”. The appellants referred us to a working draft of the Companies (Amendment) Bill 2017, which indicates that Art 2(h) of the SG Model Law was adapted from s 101(23) of the US Bankruptcy Code, and this was not seriously disputed.

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40 In this regard, we note that the phrase “adjustment of debt” appears in various provisions within Chapter 11 of the US Bankruptcy Code. The purposes of Chapter 11 include: (a) the preservation of going concerns and the maximisation of property available to satisfy creditors (see *Bank of America National Trust and Savings Association v 203 North LaSalle Street Partnership* 526 US 434 at 453); and (b) restructuring a business’s finances so that it may continue to operate, pay its creditors and produce a return for its stockholders (see *In re The Bible Speaks* 65 BR 415 (Massachusetts US Bankruptcy Court, 1986) at 425). It is thus apparent, and the respondent does not dispute, that the inclusion of the words “adjustment of debt” in Art 2(h) of the SG Model Law permits the recognition of foreign proceedings involving: (a) the restructuring of a company’s debts; and/or (b) the reorganisation of a company’s affairs through schemes of arrangement: see Neil Hannan, *Cross-Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law* (Springer, 2017) at p 65; Gerard McCormack & Wan Wai Yee, “The UNCITRAL Model Law on Cross-Border Insolvency Comes of Age: New Times or New Paradigms?” (2019) 54(2) Texas International Law Journal 273 at 289; and Look Chan Ho, “Recognising an Australian Solvent Liquidation under the UNCITRAL Model Law: *In re Betcorp*” (October 2009) Norton Journal of Bankruptcy Law and Practice (“Look’s Article”). Neither of these situations is necessarily limited to insolvent companies, as we explain in the paragraphs that follow. In our judgment, it may also be inferred from Parliament’s deliberate modification of Art 2(a) of the UNCITRAL Model Law in accordance with s 101(23) of the US Bankruptcy Code that Parliament intended to bring within the ambit of the SG Model Law proceedings that are recognisable under the provisions of US law that correspond to the SG Model Law, specifically Chapter 15 of the US Bankruptcy Code.

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41 In sum, we are satisfied that the words “or adjustment of debt” were included in Art 2(h) of the SG Model Law to enable the Singapore courts to recognise under the SG Model Law:

- (a) proceedings in foreign jurisdictions that are akin to schemes of arrangement commenced under Singapore law and/or reorganisations commenced under Chapter 11 of the US Bankruptcy Code; and
- (b) proceedings recognisable under Chapter 15 of the US Bankruptcy Code (which sets out the US’ adaptation of the UNCITRAL Model Law).

42 This is significant because neither of the categories of proceedings set out in the previous paragraph requires the subject company to be insolvent or in severe financial distress as a prerequisite for commencement. Schemes of arrangement may be commenced in Singapore under either Part 5 of the IRDA or Part 7 of the Companies Act 1967 (2020 Rev Ed) (the “SG Companies Act”). In relation to the former, s 63(1) of the IRDA provides that Part 5 will apply where there is a compromise or arrangement between the company and its creditors or any class of those creditors. In relation to the latter, under ss 210(1) and 210(2) of the SG Companies Act, the court has the power to order a meeting where a compromise or arrangement is proposed, upon the application of: (a) the liquidator (in the case of a company being wound up); or (b) the company or any creditor, member or holder of units of shares of the company (in any other case). There is nothing in Part 5 of the IRDA or Part 7 of the SG Companies Act that requires the subject company to be insolvent or in severe financial distress before the court may grant relief in aid of any scheme of arrangement or compromise contemplated in respect of the subject company. Indeed, in holding that the *pari passu* principle should *not* be extended to

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schemes which do not concern an insolvent company, this court recognised in *Hitachi Plant Engineering & Construction Co Ltd and another v Eltraco International Pte Ltd and another appeal* [2003] 4 SLR(R) 384 at [85] that there are a myriad of situations in which schemes of arrangement could be deployed in the corporate restructuring of *solvent* companies, for instance, to reorganise the share capital of a company or in the reconstruction or merger of a group of companies.

43 Similarly, corporate reorganisations in the US may be commenced under Chapter 11 of the US Bankruptcy Code in respect of solvent companies (see *In re Integrated Telecom Express, Inc* 384 F.3d 108 (3rd Cir, 2004) (“*Re Integrated Telecom*”) at 121). Section 1121 of the US Bankruptcy Code, which prescribes who may file a plan under Chapter 11, does not impose any requirement as to the insolvency or severe financial distress of an applicant. Likewise, s 109 of the US Bankruptcy Code, which prescribes the criteria to qualify as a debtor under Chapter 11, does not include any requirement of insolvency or severe financial distress.

44 As the US Bankruptcy Court observed in *In re Johns-Manville Corporation* 36 BR 727 (SD New York US Bankruptcy Court, 1984) at 736 and 741, the drafters of the US Bankruptcy Code envisioned that a financially beleaguered debtor with real debt and real creditors should not be required to wait until the economic situation is beyond repair in order to file a reorganisation petition. The reorganisation provisions of the US Bankruptcy Code were thus drafted with the aim of *liquidation avoidance* by granting ready, albeit not unfettered, access to Chapter 11. Indeed, it would make little sense to allow companies recourse to reorganisation only when they are already insolvent or in such severe financial distress as to be virtually insolvent. At the same time, we recognise that Chapter 11 petitions filed by financially healthy

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companies with no reason to seek rehabilitation or reorganisation may be rejected by the US courts (see *Re Integrated Telecom* at 121). Chapter 11 was designed with the object of affording a rehabilitative platform and that, therefore, operates as a constraint on when it may be resorted to. But the critical point for our purposes is that this regime is not restricted to insolvent companies or those in severe financial distress.

45 As for proceedings that may be recognised under Chapter 15 of the US Bankruptcy Code, it is instructive to examine the authorities in which recognition of foreign proceedings was sought under that chapter. *Re Betcorp* involved an Australian company, Betcorp Limited (“Betcorp”), which was liquidated by its shareholders. Betcorp’s liquidators applied successfully for the recognition of Betcorp’s voluntary liquidation in Australia as a foreign proceeding under Chapter 15 of the US Bankruptcy Code, the US Bankruptcy Court holding that Betcorp’s voluntary liquidation was a “foreign proceeding” within the meaning of s 101(23) of the US Bankruptcy Code. Importantly, the court held that the requirement that Betcorp’s liquidation be authorised or conducted under a law related to insolvency or the adjustment of debt did not entail that Betcorp had either to be insolvent or already contemplating invoking the provisions of Australian law to adjust any debts (*Re Betcorp* at 282). To much the same effect, the US Bankruptcy Court in *In re ABC Learning Centres Ltd* 445 BR 318 (Delaware US Bankruptcy Court, 2010) (“*Re ABC Learning Centres*”) and *In re Manley Toys Limited* 580 BR 632 (New Jersey US Bankruptcy Court, 2018) (“*Re Manley Toys*”) granted recognition in respect of foreign proceedings without considering whether the companies involved in those proceedings were either insolvent or in severe financial distress.

46 Given what we have said at [40] above and in the light of the discussion at [42]–[45], it may be inferred that the addition of the words “or adjustment of



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debt” to the definition of “foreign proceeding” in Art 2(h) of the SG Model Law was meant to empower the Singapore courts to recognise as foreign proceedings under the SG Model Law, proceedings concerning a company that were conducted under a foreign law relating to insolvency or adjustment of debt, even if that company was solvent.

47 In seeking to construe the provision purposively, the Judge had regard to certain extraneous materials to ascertain the purpose of Art 2(h) of the SG Model Law, to which we will turn shortly. We do not disagree with the Judge that pursuant to s 252(2) of the IRDA, in interpreting provisions of the SG Model Law, regard may be had to documents forming part of the record pertaining to the preparation of the UNCITRAL Model Law, as well as the 1997 Guide. Furthermore, the 2013 Guide may be considered where the 1997 Guide is silent and to the extent that there is no conflict with the 1997 Guide (see *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] 4 SLR 1343 (“*Re Zetta*”) at [37]). However, in construing the extraneous material, it is incumbent on the court to do so in the light of the fact that Parliament did not adopt the UNCITRAL Model Law in its original form but added the words “or adjustment of debt” to Art 2(h) of the SG Model Law. It seems clear that these words were intended to enable the recognition of certain types of foreign proceedings, including those that do not require that the company be insolvent or in severe financial distress. To the extent that the words “or adjustment of debt” were not considered in the material referred to by the Judge, we think, with respect, that he fell into error. As was noted in *Tan Cheng Bock* at [35], [43] and [54(c)(ii)], the legislative purpose of a statute should ordinarily be gleaned from the text itself, which has primacy over any extraneous material. The key textual amendment that was deliberately made by Parliament when it adopted the UNCITRAL Model Law considerably

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diminishes the weight of the other extraneous material that was relied on by the Judge. In any event, for the reasons we set out below at [55]–[68], we do not think the extraneous material demonstrates that it would undermine the purpose or object of the UNCITRAL Model Law to extend its scope to proceedings involving solvent companies.

48 This conclusion is also consistent with the presumption of insolvency under Art 31 of the SG Model Law, which provides that:

In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under Singapore insolvency law, proof that the debtor is unable to pay its debts within the meaning given to the expression under Singapore insolvency law.

If it were a pre-requisite for recognition that the company involved must be insolvent, then Art 31 of the SG Model Law, which presumes the insolvency of a company upon the recognition of a proceeding involving that company as a foreign main proceeding, would be largely superfluous.

*The Judge’s application of the Purposive Approach*

49 We turn to consider how the Judge applied the Purposive Approach when he set out to interpret Art 2(h) of the SG Model Law. The Judge examined various academic commentaries and the preparatory material pertaining to the UNCITRAL Model Law (GD at [72]–[76] and [81]–[98]), on the basis of which he concluded that the underlying purpose of the UNCITRAL Model Law is to “empower a recognising court to extend recognition to a foreign proceeding the subject of which is a company that is insolvent or in severe financial distress”. In line with this, the Judge considered that the words “under a law relating to insolvency” contemplate a law that prescribes a process applicable to a company that is either insolvent or in severe financial distress (GD at [99]). Thus far, we

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have no real difficulty with the Judge’s analysis and his conclusion that when the UNCITRAL Model Law was prepared, its primary purpose was to lay down a framework for the co-ordinated cross-border management of proceedings involving insolvent companies. But the Judge then held that the intent of the UNCITRAL Model Law was therefore to *exclude* from its scope the liquidation of solvent companies, and further that it would be *contrary to the underlying purpose of the UNCITRAL Model Law* to grant recognition of foreign proceedings concerning companies which are neither insolvent nor in severe financial distress. We do not follow this part of the Judge’s analysis.

50 Simply put, it does not seem to us to follow from the primary purpose of the UNCITRAL Model Law being to prescribe a co-ordinated regime for proceedings involving insolvent companies, that this must therefore exclude such proceedings where they concern solvent companies; or that to extend the operation of the UNCITRAL Model Law to solvent companies would be contrary to or would otherwise undermine its primary purpose.

51 The Purposive Approach is enshrined in s 9A(1) of the IA and contemplates that in the interpretation of a written law, an interpretation that would promote the purpose or object underlying the written law shall be *preferred* over one that would not. To that end, the Purposive Approach requires the court to ascertain the possible interpretations of the relevant provision and to *compare* the possible interpretations against the purposes or objects of the relevant statute. We have explained at [37]–[48] above that *at least* in the context of the SG Model Law, the legislative purpose of that law was not as narrow as the Judge framed it. But even in the context of the UNCITRAL Model Law, the Purposive Approach does not yield the conclusion that the Judge arrived at because the Broad Approach does not seem to us to undermine the primary purpose of that instrument.

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52 To put it another way, the present case does not require the court to choose between two interpretations of Art 2(h) which are incompatible or mutually exclusive, in the sense that one interpretation would further the underlying legislative purpose or object while the other would undermine that. Even in relation to the SG Model Law, it is uncontroversial that it is *primarily* intended to be applicable to insolvent or financially distressed companies. That much is clear from paras (c) and (e) of the preamble, which state that the purposes of the SG Model Law include the provision of effective mechanisms for dealing with cases of cross-border insolvency so as to promote:

- (a) the “fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor”; and
- (b) the “facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment”.

53 And it is common ground among all parties that a proceeding concerning an insolvent company would, assuming the other conditions are met, be recognised as a foreign proceeding. But what then of solvent companies? In our judgment, extending the ambit of the UNCITRAL Model Law beyond its primary purpose of providing for the co-ordinated cross-border management of proceedings concerning insolvent companies to encompass such proceedings concerning solvent companies would equally advance its primary purpose, while conferring some additional advantages that are consistent with the broader goal of securing a co-ordinated approach to the liquidation of companies with transnational operations. We explain this in the next section where we consider the extraneous material that the Judge relied on.

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54 In sum, we do not think the Purposive Approach leads us to the conclusion that the Judge arrived at because:

- (a) the addition of the words “or adjustment of debt” positively suggests a Parliamentary object to extend the SG Model Law to proceedings concerning solvent companies; and
- (b) even aside from this, extending the SG Model Law to such proceedings would not be contrary to or undermine the primary legislative object of facilitating the co-ordination of cross-border insolvencies.

***Whether solvent companies are excluded under the UNCITRAL Model Law***

55 As we have noted, based on the preparatory material pertaining to the purpose of the UNCITRAL Model Law, the Judge concluded that the intent of the UNCITRAL Model Law was to “exclude the liquidation of solvent companies from [its] scope” and instead it was to “empower a recognising court to extend recognition to a foreign proceeding the subject of which is a company that is insolvent or in severe financial distress” (see GD at [79] and [99]). We examine the following portions of the preparatory material, the 1997 Guide and the 2013 Guide which seem to lend the strongest support to the Judge’s conclusion.

56 First, the 1997 Guide explains that the word “insolvency” as used in the title of the UNCITRAL Model Law refers to “various types of collective proceedings against insolvent debtors” (at para 51). This was elaborated upon in the 2013 Guide at para 48, which states:

Acknowledging that different jurisdictions might have different notions of what falls within the term ‘insolvency proceedings’, the [UNCITRAL] Model Law does not define the term



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‘insolvency’. However, as used in the Model Law, *the word ‘insolvency’ refers to various types of collective proceedings commenced with respect to debtors that are in severe financial distress or insolvent.* The reason is that the [UNCITRAL] Model Law covers proceedings concerning different types of debtors and, among those proceedings, deals with proceedings aimed at liquidating or reorganizing the debtor as a commercial entity. *A judicial or administrative proceeding to wind up a solvent entity where the goal is to dissolve the entity and other foreign proceedings not falling within [Art 2(a)] are not insolvency proceedings falling within the scope of the Model Law.* Where a proceeding serves several purposes, including the winding up of a solvent entity, *it falls under [Art 2(a) of the UNCITRAL Model Law] only if the debtor is insolvent or in severe financial distress.* [emphasis added]

57 The 1997 Guide (at para 68) and the 2013 Guide (at para 63) further explain that, by specifying the required characteristics of a “foreign proceeding”, Art 2(a) of the UNCITRAL Model Law serves to limit the law’s scope of application. The 2013 Guide also states that the term “insolvency” in Art 2(a) is used to describe, on a broad level, “proceedings involving debtors that are in severe financial distress or insolvent”, and that the focus of the UNCITRAL Model Law is upon such debtors and the laws that address the financial distress of those debtors (see the 2013 Guide at paras 65 and 67). Specifically in relation to the phrase “law relating to insolvency”, the 2013 Guide explains at para 73 that:

This formulation is used in the [UNCITRAL] Model Law to acknowledge the fact that liquidation and reorganization might be conducted under law that is not labelled as insolvency law (e.g. company law), but which nevertheless deals with or addresses insolvency or severe financial distress. The purpose was to find a description that was sufficiently broad to encompass a range of insolvency rules irrespective of the type of statute or law in which they might be contained and irrespective of whether the law that contained the rules related exclusively to insolvency. *A simple proceeding for a solvent legal entity that does not seek to restructure the financial affairs of the entity, but rather to dissolve its legal status, is likely not one pursuant to a law relating to insolvency or severe financial distress.* [emphasis added]

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58 The upshot of the extracts that we have reproduced in the preceding paragraphs is that the UNCITRAL Model Law, as originally contemplated by its drafters, was undeniably intended to be focused primarily on companies that are either insolvent or in severe financial distress. It is thus unsurprising that the 1997 Guide and the 2013 Guide explain, in that context, that for the purposes of Art 2(a) of the UNCITRAL Model Law, proceedings pursuant to a “law relating to insolvency” generally do not include proceedings concerning solvent companies. That was very likely the view at the time the UNCITRAL Model Law was drafted. It is also almost certainly the case that the need for a co-ordinated approach arose acutely in the context of insolvent companies.

59 That said, we do not think that the preparatory material, the 1997 Guide and the 2013 Guide go so far as to suggest that expanding the ambit of the UNICTRAL Model Law to include solvent companies would *undermine* the purpose of the UNCITRAL Model Law. Nor does the preparatory material suggest that the processes available under the provisions of the UNCITRAL Model Law were intended to be *excluded* from their application to solvent companies.

60 We are fortified in this view by the observations in *The Judicial Perspective* regarding the interpretation of the phrase “pursuant to a law relating to insolvency” in the 2013 Guide. At paras 83–85, the authors of *The Judicial Perspective* set out the different approaches that have been taken towards interpreting the phrase “law relating to insolvency”. By then, *Re Stanford International Bank Ltd and another* [2010] 3 WLR 941 (“*Re Stanford (CA)*”) and *Re Betcorp* had been decided and in these decisions, the courts in the UK and the US had held that the UNCITRAL Model Law could apply to solvent companies. The authors, having noted the developments in case law, observed at para 86:

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Following consideration and discussion of this issue in UNCITRAL Working Group V (Insolvency Law) and the Commission, the [2013 Guide] clarifies that the word ‘insolvency’, as used in the [UNCITRAL Model Law], refers to various types of collective proceedings commenced with respect to debtors that are in severe financial distress or insolvent. A judicial or administrative proceeding to wind up a solvent entity where the goal is to dissolve the entity and other foreign proceedings not falling within [Art 2(a) of the UNCITRAL Model Law] are not insolvency proceedings within the scope of the [UNCITRAL Model Law]. Where a type of proceeding serves several purposes, including the winding up of a solvent entity, it falls under [Art 2(a) of the UNCITRAL Model Law] only if the debtor is insolvent or in severe financial distress.

In making this observation, the authors also referred to para 48 of the 2013 Guide (which has been reproduced above at [56]). That is significant because, having acknowledged the different approaches that had been and may be taken to the interpretation of a “law relating to insolvency”, the authors do not suggest that the position in *Re Betcorp* and *Re Stanford* is contrary to or otherwise undermines the underlying purpose of the UNCITRAL Model Law. There is also no suggestion that proceedings concerning solvent companies are positively to be *excluded* from the scope of the UNCITRAL Model Law.

61 Further, in the *Report of Working Group V (Insolvency Law) on the work of its thirty-ninth session*, UNCITRAL, 44th Sess, UN Doc A/CN.9/715 (2010), the Working Group noted that Art 2(a) of the UNCITRAL Model Law had “given rise to diverse interpretation in case law”, and the question was raised as to whether the Working Group should clarify the definition of certain elements in Art 2(a). Specifically in response to the question of whether there was a need to define the requirement of the insolvency of the debtor, it was said that this was unnecessary as such a requirement “would flow from the terms ‘pursuant to a law relating to insolvency’”. The Working Group then stated at para 19:

With respect to the need of providing a definition for the terms ‘pursuant to a law relating to insolvency’, it was felt that

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difficulties in judicial interpretations of those terms had resulted from equating terminology of legislation of different jurisdictions. It was noted that *the Working Group did not aim for unification of insolvency laws*, but to provide clarity on concepts in the Model Law. In that respect, it was said that *it would be impossible to further detail the definition of a ‘foreign proceeding’ that would still capture all domestic proceedings*. It was further noted that the notion of ‘a law relating to insolvency’ already provided the desirable degree of flexibility. ... [emphasis added]

62 The reluctance of the Working Group to expressly prescribe a requirement of insolvency or severe financial distress in Art 2(a) of the UNCITRAL Model Law, despite being cognisant of the differing interpretations of Art 2(a) by various courts in different countries, reinforces our conclusion that extending the recognition regime under the UNCITRAL Model Law to proceedings concerning solvent companies is neither inconsistent nor incompatible with the primary purpose of the UNCITRAL Model Law.

63 We note in this regard that Mr Kumar accepted at the hearing before us that there is nothing in the preparatory material which suggests that solvent proceedings were meant to be *excluded* from the ambit of the UNCITRAL Model Law, much less that the purposes of the UNCITRAL Model Law would be undermined by the inclusion of such proceedings within its scope. We are therefore satisfied that even if the words “or adjustment of debt” were not added to Art 2(h) of the SG Model Law, and Art 2(a) of the UNCITRAL Model Law was adopted in its original form, it would not be contrary to the purpose of the UNCITRAL Model Law to extend its scope to include solvent companies.

64 We would venture further to say that the Broad Approach and consequently, interpreting Art 2(h) of the SG Model Law as encompassing solvent proceedings within its ambit, is consistent with the overall purpose of the UNCITRAL Model Law. The UNCITRAL Model Law is designed to

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provide a harmonised approach to the treatment of cross-border insolvency proceedings in national legal systems, to facilitate co-operation between courts and office holders involved in the same insolvency across different jurisdictions, to provide for the recognition of proceedings (and the consequences of such recognition), and to afford direct access by foreign representatives of such companies to the courts of the enacting state (*Goode on Principles of Corporate Insolvency Law* (Kristin van Zwieten gen ed) (Sweet & Maxwell, 5th Ed, 2018) (“*Goode on Insolvency Law*”) at para 16-16; see also 1997 Guide at paras 1–3 and 2013 Guide at paras 1–3). To this end, one of the four key principles underlying the UNCITRAL Model Law is the co-operation and co-ordination principle, which obliges courts and insolvency representatives to communicate and co-operate in order to ensure that the debtor’s insolvency estate is administered fairly and efficiently, with a view to maximising benefits to creditors (*The Judicial Perspective* at para 14(d)). It appears to us, as the Judge noted (GD at [78]), that at least one of the fundamental objects of the UNCITRAL Model Law is to prevent creditors from rushing to satisfy their claims against a debtor company in a particular jurisdiction in order to gain an advantage over other creditors. This in turn ensures a sensible and orderly dissolution of a company or facilitates the successful rehabilitation of the company, as the case may be.

65 While the concerns mentioned above arise predominantly in the context of an insolvent company whose assets are insufficient to satisfy the claims of all its creditors in full, solvent regimes and insolvent regimes are seldom mutually exclusive. A company undergoing a solvent, voluntary liquidation may subsequently need to come under the court’s supervision should it transpire that the company is insolvent. In such circumstances, the relevant legislation may provide for mechanisms to facilitate the transition between solvent and



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insolvent regimes. For instance, pursuant to s 496(1)(a) of the Australian Corporations Act 2001 (Cth) (the “Australian Corporations Act”), where a liquidator is of the opinion that a company will not be able to pay or provide for the payment of its debts in full in accordance with the declaration of solvency filed by the company’s directors pursuant to s 494, the liquidator must, among other things, apply for the company to be wound up in insolvency. Relatedly, s 467B allows the court to order the winding up of a company even if the company is already being wound up voluntarily. Conversely, s 482 empowers the court to terminate a winding up. Indeed, it was against this backdrop that the court in *Re Betcorp* considered that companies had “the statutory ability to shift among various forms of dissolution given changing circumstances” under the Australian Corporations Act (see *Re Betcorp* at 279 and 282). To similar effect, s 124(1) of the Cayman Act and O 15 r 1 of the Cayman CWR oblige a liquidator to apply for an order that the solvent, voluntary liquidation of a company continues under the Cayman Grand Court’s supervision if the directors of the company fail to sign a declaration of solvency (see [7] above). In our judgment, the possibility of movement between solvent and insolvent regimes provides further support for adopting the Broad Approach. In view of the possibility that a proceeding concerning a solvent company might transition into one dealing with an insolvent entity, that proceeding should be regarded as one being conducted under a law relating to insolvency or adjustment of debt as long as the relevant law contains provisions dealing with insolvency or adjustment of debt.

66 Furthermore, it bears reiterating a proceeding must satisfy other requirements to qualify as a foreign proceeding within the meaning of Art 2(h) of the SG Model Law. In our judgment, the purposes of the UNCITRAL Model Law identified above, in particular, to ensure the co-ordinated and orderly

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dissolution or successful rehabilitation of a company, would be engaged in respect of a proceeding which satisfies these other requirements, even if the company in question is solvent. Specifically, Art 2(h) requires among other things that: (a) the proceeding in question must be collective in nature, which as we elaborate below at [104], means that the proceeding must involve all creditors of the debtor generally and deal with substantially all of the debtor's assets and liabilities; (b) the property and affairs of the debtor must be subject to the foreign court's control or supervision; and (c) the overall purpose of the proceeding must be the reorganisation or liquidation of a company. The sum effect of these requirements is to exclude from the scope of the SG Model Law certain types of private liquidations or restructurings commenced by individual creditors in respect of only part of company's assets, simple proceedings such as striking a company off the register, and proceedings pertaining to the investigation of misappropriated corporate funds (see [105] below). Quite clearly, in such proceedings, the need for co-operation and co-ordination between creditors, office holders and courts in different jurisdictions simply does not arise.

67 Conversely, where a proceeding involves all the creditors of a company and its assets and liabilities for the purpose of the company's reorganisation or liquidation, and the company's property and affairs are placed under the foreign court's control or supervision, the importance of co-operation and co-ordination between the different stakeholders becomes paramount in securing an orderly dissolution and/or the successful rehabilitation of the company. Put simply, where the other requirements of Art 2(h) are satisfied, it seems to us that the rationale for according recognition of foreign proceedings would be engaged, at least to some degree, regardless of the solvency of the company in question. This is all the more so where the overall status of a company with transnational

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operations may be solvent, while its branches may not be solvent within particular jurisdictions.

68 For these reasons, we are satisfied that adopting the Broad Approach, and in consequence interpreting Art 2(h) of the SG Model Law as encompassing solvent proceedings in its ambit, would not contradict or undermine the underlying object of the UNCITRAL Model Law. On the contrary, such an approach coheres with the purposes of the UNCITRAL Model Law which we have identified at [64] above.

***The prevailing approach to the interpretation of the UNCITRAL Model Law***

69 A further factor that militates in favour of interpreting Art 2(h) of the SG Model Law as including proceedings concerning solvent companies is the desire to ensure that our interpretation of Art 2(h) of the SG Model Law is broadly harmonious with the approaches taken in other jurisdictions. Article 8 of the SG Model Law mandates that in the interpretation of the SG Model Law, regard is to be had to its international origin and the need to promote uniformity in its application and the observance of good faith. In this regard, the court in *Re Zetta* noted at [38] that as far as possible, Singapore courts ought to attempt to “tack as closely as possible to the general interpretive trends taken in other jurisdictions that apply the Model Law in its various enactments”. It is noteworthy that in the majority of cases across various jurisdictions, courts have held that the scope of their respective adaptations of the UNCITRAL Model Law includes proceedings involving solvent companies. We set out the position in the US, the UK, Australia and New Zealand.

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*The position in the US*

70 We first consider the position in the United States. The equivalent of Art 2(h) of the SG Model Law in the US is s 101(23) of the US Bankruptcy Code, which provides:

The term ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

71 The position in the US is encapsulated in the landmark decision in *Re Betcorp*, to which we have referred, and which concerned an application for recognition of Betcorp’s voluntary liquidation in Australia as a foreign proceeding under Chapter 15 of the US Bankruptcy Code. The US court held that there was no requirement for a company to be insolvent or contemplating the adjustment of any debts in order for a proceeding concerning that company to be regarded as being conducted under a law related to insolvency or the adjustment of debts. In particular, the court noted that the Australian Corporations Act “regulates the whole of the corporate life-cycle of an Australian corporation”, and that several sub-parts of Chapter 5 of the Australian Corporations Act (on External Administration) contain provisions that deal with corporate insolvency and allow for the adjustment of debts (*Re Betcorp* at 282). These facts, coupled with “the statutory ability to shift among various forms of dissolution given changing circumstances”, led the court to conclude that the Australian Corporations Act was a law related to insolvency or the adjustment of debt. On this basis, the US court held that Betcorp’s voluntary winding up, which was conducted under the Australian Corporations Act, was a proceeding conducted under a law relating to insolvency or adjustment of debt for the purposes of s 101(23) of the US Bankruptcy Code:

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see *Re Betcorp* at 281–282). In other words, the position in the US is that the requirement that a proceeding be conducted under a law relating to insolvency or adjustment of debt would be satisfied as long as the law in question that contained the specific provision under which the proceeding was conducted also contains provisions dealing with insolvency or the adjustment of debt, even if those provisions are not implicated in the case at hand. This is what we have referred to above as the Broad Approach.

72 *Re Betcorp* has attracted a degree of academic criticism. In *Cross-Border Insolvency* (Richard Sheldon QC gen ed) (Bloomsbury Publishing, 4th Ed, 2015) (“*Sheldon on Cross-Border Insolvency*”), it is noted at para 3.35 that although the members’ voluntary winding up in *Re Betcorp* was initiated under a body of law which included provisions for an insolvent liquidation, “that coincidence does not necessarily justify bringing within the UNCITRAL Model Law’s scheme of recognition and assistance a proceeding in relation to a solvent company, the purpose of which includes the return of a surplus to members”. Importantly, however, this is qualified by the observation that:

*Unless some specific modification is made to the UNCITRAL Model Law, it is arguable that there is no obvious justification for allowing creditors’ rights to be restrained by recognising a solvent liquidation as a foreign proceeding. [emphasis added]*

73 As an example of such a modification, the authors refer to s 101(23) in the context of Chapter 15 of the US Bankruptcy Code, which “modifies the UNCITRAL Model Law to enable recognition of a solvent scheme of arrangement”. In a similar vein, and as we have explained above at [37]–[46], the addition of the words “or adjustment of debt” to Art 2(h) of the SG Model Law was a deliberate modification of Art 2(a) of the UNCITRAL Model Law, which was meant to extend the scope of the SG Model Law to solvent companies.



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74 The respondent also relies on the critique of *Re Betcorp* in Look’s Article, where it is suggested that the decision in *Re Betcorp* is open to question for a number of reasons. Those pertinent to the present appeal may be summarised as follows:

(a) The US Bankruptcy Court relied on the Australian version of the UNCITRAL Model Law to conclude that a members’ voluntary winding up was a “foreign proceeding” for the purposes of Chapter 15 of the US Bankruptcy Code. However, the US court appears to have overlooked the legislative history behind Australia’s adaptation of the UNCITRAL Model Law. In particular, the Commonwealth of Australia, Parliament, *Cross-Border Insolvency: Corporate Law Economic Reform Program Proposals for Reform Paper No 8* (Discussion Paper, 2002) (“the CLERP Paper”) expressly states that the scope of the UNCITRAL Model Law as implemented in Australia would not extend to a members’ voluntary winding up or a winding up by a court on just and equitable grounds as such proceedings may not be insolvency-related.

(b) The US Bankruptcy Court also considered that Australia’s Parliament viewed a voluntary winding up as a proceeding that is conducted under a law relating to insolvency under Australia’s version of the UNCITRAL Model Law. The US Bankruptcy Court had relied on the explanatory memorandum (the “Explanatory Memorandum”) accompanying the Cross-Border Insolvency Bill 2008 (Cth), which enacted the UNCITRAL Model Law in Australia. The Explanatory Memorandum identified “Chapter 5 (other than Parts 5.2 and 5.4A)” of the Australian Corporations Act as a law relating to insolvency. The US Bankruptcy Court thought it significant that Part 5.5 of Chapter 5 of the Australian Corporations Act, which governed the voluntary winding up

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of a company, was not excluded from the description of laws relating to insolvency in the Explanatory Memorandum. However, it failed to appreciate the distinction between a members' voluntary winding up (which is generally a solvent liquidation) and a creditors' voluntary winding up (which is generally an insolvent liquidation). The fact that both forms of winding up are contained in Part 5.5 of Chapter 5 of the Australian Corporations Act, which was identified as a "law relating to insolvency", did not necessarily mean that a members' voluntary liquidation would fall within the ambit of Australia's version of the UNCITRAL Model Law.

(c) Recognising a foreign members' voluntary liquidation could entail an automatic stay on all litigation against the company. Yet, it is difficult to see why a proceeding primarily aimed at conferring benefit on shareholders should have the effect of impeding creditors from enforcing their rights against the company through litigation.

75 In relation to the first two criticisms noted at [74(a)] and [74(b)] above, we accept that the US Bankruptcy Court in *Re Betcorp* may not have fully appreciated the legislative history behind Australia's adoption of the UNCITRAL Model Law. However, as the Judge pointed out, the question before the US court in *Re Betcorp* was whether Betcorp's voluntary liquidation was a "foreign proceeding" within the meaning of s 101(23) of the US Bankruptcy Code (GD at [139]). That is a question reserved for the recognising court which will determine this in accordance with its own application of the UNCITRAL Model Law. The US court is not bound by the way in which the foreign proceeding is characterised under Australian law (see *Re Agrokor DD and in the matter of the Cross-Border Insolvency Regulations 2006* [2017] All ER (D) 83 (Nov) ("*Re Agrokor*") at [34]). Furthermore, apart from Australia's

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adoption of the UNCITRAL Model Law and the Explanatory Memorandum, there was another key pillar underlying the US court’s conclusion that Betcorp’s voluntary liquidation was conducted under a law relating to insolvency or adjustment of debt. That was the fact that several sub-parts of Chapter 5 of the Australian Corporations Act contain provisions that deal with corporate insolvency and also allow for the adjustment of debt. Further, these also contemplated the possibility of shifting among various pathways to dissolution in the light of changing circumstances (see above at [71]). Therefore, even if the US court had misunderstood the Australian legislature’s intentions with regard to Australia’s version of the UNCITRAL Model Law, that is not an adequate reason not to adopt the approach in *Re Betcorp*. As to the suggestion that the court in *Re Betcorp* may have misunderstood the legislative intention behind Australia’s enactment of the UNCITRAL Model Law, we note that this is not how at least one Australian court has approached the question (see [90]–[91] below).

76 As to the third criticism at [74(c)] above, such concerns may be adequately managed through the recognising court granting recognition subject to conditions. We address this point in more detail below at [96].

77 We now consider other decisions of the US Bankruptcy Court. In *Re ABC Learning Centres*, the boards of an Australian Company (“ABC Learning”) and its wholly-owned subsidiary (“ABC Holdings”) resolved that the companies were likely to become insolvent and should enter voluntary administration pursuant to the Australian Corporations Act. Petitions were filed before the US Bankruptcy Court seeking recognition of the voluntary administration proceedings, which were subsequently converted by the creditors of the companies into liquidation proceedings. Endorsing *Re Betcorp*, the US court held that the liquidations of ABC Learning and ABC Holdings

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were authorised or conducted under a law related to insolvency or the adjustment of debts for the purposes of s 101(23) of the US Bankruptcy Code, as numerous subsections within the Australian Corporations Act address corporate insolvency and the adjustment of corporate debt (see *Re ABC Learning Centres* at 331). Importantly, in determining that the Australian Corporations Act was a law related to insolvency or the adjustment of debts, the court did not consider the companies' solvency or financial status.

78 In *Re Manley Toys*, a Hong Kong company entered into voluntary liquidation in Hong Kong in the face of ongoing litigation, including a pending sanctions motion in a US court in connection with a judgment debt owed by the company, and alleged declining sales. The voluntary liquidation was commenced under the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap 32) (HK) (the "CWMPO"), which both parties' experts on Hong Kong insolvency law agreed set forth the framework for liquidating a company. The US Bankruptcy Court determined that the voluntary liquidation was conducted under a law related to insolvency or adjustment of debts (see *Re Manley Toys* at 638 and 643). As was the case in *Re Betcorp* and *Re ABC Learning Centres*, the solvency status of the company was not a relevant consideration in the court's decision that the Hong Kong proceeding was conducted under a law related to insolvency or adjustment of debts.

79 The respondent relies on *In re Global Cord Blood Corporation* 2022 WL 17478530 (SD New York US Bankruptcy Court) ("*Re Global Cord*"), to contend that even though the court in that case adopted the Broad Approach, the decision illustrates that courts in the US would nonetheless consider whether a foreign proceeding concerns an insolvent or severely financially distressed company in determining whether to grant recognition under Chapter 15 of the US Bankruptcy Code. In our judgment, the respondent's reliance on *Re Global*

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*Cord* is misplaced. The US Bankruptcy Court accepted that the relevant Cayman proceeding was brought under the “just and equitable” ground for winding up with the purpose of preventing corporate misconduct, and not under the insolvency provisions of the Cayman Act (*Re Global Cord* at 3 and 12). It then went on to conclude that the Cayman proceeding was not a “foreign proceeding” as was required for Chapter 15 recognition because the Cayman proceeding was neither collective nor for the purpose of reorganisation or liquidation within the meaning of s 101(23) of the US Bankruptcy Code (*Re Global Cord* at 8–9 and 12–13).

80 What is material is that notwithstanding that the Cayman proceeding was not brought under the insolvency provisions of the Cayman Act, the US Bankruptcy Court in *Re Global Cord* opined that the Cayman Act satisfied the definitional requirement of a “law relating to insolvency or adjustment of debt”. Importantly, the court’s observation that the purpose of Chapter 15 was to assist foreign courts dealing with “insolvency” was made in the limited context of explaining the case law’s focus on the role and impact of creditors in determining whether a proceeding is “collective”. The court did not, however, hold that the solvency status of a company would bear on its decision to grant recognition under Chapter 15. The court in fact expressly affirmed the decision in *Re Betcorp*, observing (at 9):

The relevant test is not whether the currently pending proceeding concerns insolvency or adjustment of [debt], or even whether the current proceeding in some sense relates to those objectives, but rather whether the proceeding is being brought under a ‘law’ that ‘relat[es] to’ insolvency or adjustment of debt. Further, section 101(23) is to be ‘broadly construed.’ ... This guidance counsels against an unduly grudging application of this flexibly worded test by narrowly examining whether the specific subsections of the governing Cayman statutory scheme that are presently being applied redress insolvency or creditor rights.



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81 On the court’s observation that the foreign proceeding was neither “collective” nor “for the purpose of reorganization or liquidation” as the law requires, it was found on the facts of the case that the Cayman proceeding fell outside the range of matters that Chapter 15 was designed to address. In delineating the limits of this range of matters, the court should examine all the criteria spelt out in the relevant provision – in our context, Art 2(h) of the SG Model Law – without being fixated on the solvency status of the relevant company.

*The position in the UK*

82 The UK equivalent of Art 2(h) of the SG Model Law is Art 2(i) of Schedule 1 to The Cross-Border Insolvency Regulations 2006 (SI 2006 No 1030) (UK) (respectively, “Art 2(i) of the UK Model Law” and the “CBIR”), which defines a “foreign proceeding” as:

[A] collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation[.]

83 In *Re Stanford International Bank Ltd and others* [2009] EWHC 1441 (Ch) (“*Re Stanford (HC)*”), a company (“SIB”) was liquidated by the court in Antigua and Barbuda pursuant to s 300 of the International Business Corporations Act (Cap 222) (Antigua and Barbuda) (the “IBCA”), and liquidators were appointed pursuant to ss 304–306 of the IBCA. Section 300 of the IBCA pertained to the liquidation and dissolution of companies under the supervision of the court where the company had failed to comply with regulatory requirements. Lewison J found that the liquidators of SIB were appointed pursuant to a law relating to insolvency, notwithstanding that

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insolvency did not feature as a ground under s 300 of the IBCA. In particular, he observed at [94]:

It is, in my judgment, clear from the court’s order and the judgment of [the court in Antigua and Barbuda] that it was not basing the order on section 300 alone. It made the order because, having considered the evidence, it concluded that it was just and equitable that SIB be wound up. *An important part of the evidence was that SIB was insolvent and could not be reorganised via the receivership.* In my judgment at least one of the reasons why [the judge in Antigua and Barbuda] made the order that he did was that *he was satisfied that SIB was insolvent.* [emphasis added]

84 On appeal in *Re Stanford (CA)*, the Court of Appeal (“EWCA”) came to the same conclusion as Lewison J albeit for slightly different reasons. The EWCA held that for the purposes of the definition of “foreign proceeding” under the Art 2(i) of the UK Model Law, it was necessary to start by identifying the law under which the relevant proceedings had been brought and was being pursued, before considering whether that law related to insolvency and whether in the light of the other factors to which the definition referred, the proceeding could be regarded as being brought “pursuant” to that law (*Re Stanford (CA)* at [24], *per* Sir Andrew Morritt C). Applying this approach, the EWCA identified Part IV of the IBCA as the law under which SIB’s liquidation proceedings had been brought, and held that Part IV *was* a law relating to insolvency because it “provided for the winding up of corporations incorporated in Antigua for the purpose of carrying on an international trade or business on just and equitable grounds, which included insolvency, as well as infringements of regulatory requirements” (*Re Stanford (CA)* at [15]). A key point to note is that in *Re Stanford (CA)*, the insolvency of the company was not taken into account in determining whether the company’s liquidation was conducted under a law relating to insolvency. Instead, the focus was on whether insolvency was *one of the grounds* for winding up within Part IV of the IBCA.

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85 In *Re Agrokor*, a court in Croatia ordered the extraordinary administration of a company incorporated in Croatia (“Agrokor DD”), under the Law on Extraordinary Administration Proceeding in Companies of Systemic Importance for the Republic of Croatia (the “Extraordinary Administration Law”). The High Court of England and Wales held that the Extraordinary Administration Law was a law relating to insolvency for the purposes of the CBIR (*Re Agrokor* at [77]). In particular, having examined the relevant case law in the US, the UK and Australia, the court observed (at [63] and [73]):

63. From these authorities and guides to interpretation, it is clear that the requirement that the law under which the proceeding is brought be ‘an insolvency law’ is satisfied *if insolvency is one of the grounds on which the proceeding can be commenced, even if (as in Re Betcorp) insolvency could not actually be demonstrated, and there was another basis for commencing the proceeding*. The matter is obviously all the clearer if insolvency can indeed be demonstrated.

...

73. It is clear that the test applied [by the courts in Belgrade and Montenegro] for a law relating to insolvency is whether under the law concerned there must necessarily be insolvency shown in relation to all the companies concerned. That is far from the test applied in the ‘common law’ cases discussed above, where it was accepted that a law could be a law relating to insolvency if insolvency was one of the grounds on which a proceeding could be brought. Indeed, in [*Re Betcorp*], the evidence was that the company subject to members’ voluntary winding up was in fact solvent. But insolvency would have been a basis for such a winding up, as it was in [*Re Stanford*]. In my judgment I should not reject the wider approach of those common law cases in favour of the narrower one adopted by the courts of Belgrade and Montenegro. ...

[emphasis in original omitted; emphasis added in italics]

86 Nevertheless, the court also considered that the extraordinary administration of Agrokor DD could only be commenced on grounds of insolvency or impending insolvency, whether proved or deemed (at [68]), and

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that there was evidence that Agrokor DD was in a state of serious financial distress (at [69]).

87 It appears to us, based on these cases, that to this point, the position in the UK with respect to the interpretation of Art 2(i) of the UK Model Law is broadly aligned with the US position. It is true that in these cases, the courts have also considered the insolvency and/or financially distressed state of the relevant companies. However, it seems to us that the most that can be said is that where the proceedings can be opened on multiple grounds, only some of which relate to insolvency, the proceedings would nonetheless *clearly* fall within the scope of the UK Model Law if they were opened on an insolvency-related ground or where an anticipation of insolvency might have influenced the decision to open proceedings on some other ground (see *Goode on Insolvency Law* at para 16-29). It is also apparent that in these cases, the inquiry into the solvency of the company was not a necessary step in coming to a decision on whether to accord recognition to the “foreign proceeding” under Art 2(i) of the UK Model Law.

88 Against the weight of these cases, the High Court in *Re Sturgeon* declined to follow the US position. In *Re Sturgeon*, a solvent Bermuda-registered company (“Sturgeon Ltd”) was wound up in Bermuda on the just and equitable ground under s 161(g) of the Bermuda Companies Act 1981 (the “Bermuda Companies Act”). Notably, s 161(e) of the Bermuda Companies Act provided that a company may be wound up if it is unable to pay its debts (see *Re Sturgeon* at [9]). The liquidators obtained an *ex parte* order recognising the Bermudan liquidation in the UK, and the applicant, a former director of the company, applied to terminate the recognition order. An issue which the High Court had to determine was whether the solvent liquidation of Sturgeon Ltd on the just and equitable ground was a “foreign proceeding” within the meaning of

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Art 2(i) of the UK Model Law. After undertaking a review of the Working Group’s reports and preparatory papers, the High Court answered that question in the negative. In arriving at that conclusion, the court observed that the Working Group’s reports were focused on “the need to recognise and provide relief upon recognition of foreign proceedings, that concerned debtors that either could not pay their debts or were struggling to pay their debts and seeking to reorganise” (*Re Sturgeon* at [70]). It was therefore thought to be contrary to the purpose and object of the UNCITRAL Model Law to interpret “foreign proceeding” as including proceedings that concerned solvent companies and proceedings that have the purpose of producing a return to members and not creditors (*Re Sturgeon* at [117]). The court criticised *Re Betcorp* as having made a wrong turn by recognising as a foreign proceeding the liquidation of a company which was neither insolvent nor in severe financial distress (see *Re Sturgeon* at [121]).

89 With respect, we do not agree with the criticisms levelled in *Re Sturgeon* against *Re Betcorp*. We accept, as we have already said, that the UNCITRAL Model Law was *primarily focused* on companies that are insolvent or in severe financial distress and was not drafted to deal specifically with solvent companies. However, as we explained above at [55]–[63], we do not think that it would be *contrary* to the purpose and object of the UNCITRAL Model Law to extend the scope of the UNCITRAL Model Law to proceedings concerning solvent companies. Indeed, as we have also explained at [64]–[68] above and as we will explain at [97] below, there are good reasons for construing the UNCITRAL Model Law as having this effect both as a matter of principle and practicality.



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*The position in Australia*

90 The position in Australia is also aligned with the position in the US. In *Re Chow Cho Poon (Private) Ltd* (2011) 80 NSWLR 507 (SC, NSW), a Singapore-incorporated company (“CCP”) was ordered to be wound up pursuant to s 254(1)(i) of the Singapore Companies Act (Cap 50, 2006 Rev Ed) (the “Companies Act 2006”) on the just and equitable ground. The Supreme Court of New South Wales (“NSWSC”) acknowledged at [40] that intuitively, the Singapore winding-up proceeding was not a proceeding “pursuant to a law relating to insolvency” as it was not the inability of CCP to pay its debts as they fell due that constituted the ground on which the Singapore court ordered that the company be wound up. Nevertheless, the NSWSC, endorsing the approaches taken in *Re Stanford (HC)*, *Re Stanford (CA)*, *Re ABC Learning Centres* and *Re Betcorp*, went on to observe at [51]:

These English and American decisions point to a clear basis on which *the whole of the Singapore Companies Act or, at the least, the whole of its winding up provisions might be classified as ‘a law relating to insolvency’*, even though the particular winding up was ordered on the just and equitable ground alone and, so far as this court has been told, without any finding (express or implied) of insolvency. [emphasis added]

91 The NSWSC accordingly found that the winding up of CCP in Singapore was a “foreign proceeding” under Art 2(a) of sch 1 to the Australian Cross-Border Insolvency Act 2008 (Cth) (which is *in pari materia* with Art 2(i) of the UK Model Law), without giving further consideration to whether CCP was in fact insolvent or in financial distress.

*The position in New Zealand*

92 So too is the position in New Zealand broadly consistent with the US position in that the solvent status of a company does not exclude proceedings

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concerning that company from the scope of the Insolvency (Cross-Border) Act 2006 (NZ) (the “NZ Cross-Border Insolvency Act”). In *ANZ National Bank Ltd v Sheahan and Lock* [2013] 1 NZLR 674 (“*ANZ National Bank*”), several Australian companies were placed into liquidation by creditors’ resolutions. The liquidation in Australia produced a surplus after all the creditors had been paid, meaning that the Australian companies were solvent. The liquidators subsequently applied under the NZ Cross-Border Insolvency Act for an order that an employee of a bank which had financed the Australian companies attend for examination and produce documents on matters relating to the Australian companies. The bank opposed the application, arguing that the NZ Cross-Border Insolvency Act was not intended for use by foreign representatives of a solvent company. This submission was rejected by the Auckland High Court, which observed at [104]:

... [W]hile the administration of the Australian liquidations happens to have produced a surplus, it remains appropriate to characterise the regime as a ‘collective ... proceeding ... pursuant to a law relating to insolvency’. ... The purpose [of a winding up] is ‘to ensure that an orderly regime is imposed upon all interested parties to that none of them individually may enhance his position by exploiting some fortuitous circumstance which may yield an unfair advantage ...’

### ***Practical concerns***

93 Finally, we address the practical concerns that may arise if proceedings concerning solvent companies were included within the scope of the SG Model Law pursuant to the Broad Approach. This was alluded to by the Judge and by the respondent.

94 The Judge observed that the Broad Approach “subordinates substance entirely to form” because under the Broad Approach, any type of proceeding, no matter how far removed it may be from any connection to insolvency, would

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be a proceeding under a law relating to insolvency within the meaning of Art 2(h) of the SG Model Law simply because that proceeding is commenced under a provision which happens to be found in a statute which deals generally with insolvency. The Judge raised as an example an applicant who has secured relief under s 216(2)(c) of the Companies Act 2006 to commence civil proceedings in the name of and on behalf of the company, noting the absurdity of categorising such a proceeding as a “foreign proceeding” under Art 2(h) simply because the Companies Act 2006 also contained provisions dealing with corporate insolvency (see the GD at [59]–[61]). In our judgment, the Judge’s concerns are adequately addressed by the safeguards present in the other elements of Art 2(h). As the Judge noted at [62], and as was accepted by counsel for the respondent during the hearing before us, proceedings conducted under s 216 of the Companies Act 2006 would not be collective proceedings within the meaning of Art 2(h) of the SG Model Law since such proceedings do not deal with all of the company’s creditors collectively. We elaborate below at [102]–[107] on the requirement that the foreign proceeding must be collective and whether Ascentra’s Cayman Liquidation counts as such a proceeding. Aside from this, we reiterate the point we have made at [29] above that there are at least five criteria that must be met for a proceeding to come within Art 2(h). Accordingly, the concern that any type of proceeding, no matter how disconnected it may be from insolvency, may be brought into the ambit of Art 2(h) seems to us to be somewhat overstated.

95 Relatedly, the respondent submits that adopting the Broad Approach “open[s] [the] floodgates for recognition and assistance applications”, which would allow solvent companies to take advantage of the SG Model Law and create absurd outcomes. In particular, it is suggested that:

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(a) The Broad Approach would result in an automatic moratorium being granted to solvent companies if proceedings concerning such companies are recognised as foreign main proceedings (see Art 20(1) of the SG Model Law). However, there is no justification for providing a moratorium to a solvent company, especially when doing so would afford the company a shield against litigation that they would not otherwise be entitled to.

(b) The recognition of a foreign proceeding as a foreign main proceeding would give rise to a presumption of insolvency under Art 31 of the SG Model Law. This may lead to the absurd outcome where a solvent company is presumed to be insolvent for the purpose of commencing secondary proceedings under Singapore insolvency law, and would allow the solvent company to sidestep legislative requirements that would otherwise apply to it.

96 In our view, the policy concerns raised by the respondent are overstated. In relation to the risk of a moratorium being granted to a solvent company, Art 20(6) of the SG Model Law expressly provides that the court may, on the application of the foreign representative or a person affected by the moratorium, or of its own motion, modify or terminate such stay and suspension or any part of it, either altogether or for a limited time, on such terms and conditions as the court thinks fit. It is thus clear that the Singapore courts may recognise a foreign proceeding as a foreign main proceeding without an accompanying moratorium necessarily being maintained. This would prevent the legitimate claims of creditors against a solvent company from being unfairly stymied. As to the respondent's argument regarding the presumption of insolvency, this can be dealt with quickly. The presumption of insolvency in Art 31 of the SG Model Law is expressly qualified by the words "[i]n the absence of evidence to the

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contrary”. It is therefore inconceivable that a company which has been proved to be solvent would nonetheless be able to invoke the presumption of insolvency under Art 31 of the SG Model Law.

97 On the contrary, we agree with the appellants’ submission that imposing a requirement that the subject company must be either insolvent or in severe financial distress may introduce some measure of complexity at the recognition stage. Assuming for the moment that the Judge was correct in holding that recognition would only be granted to foreign proceedings involving insolvent companies, and “insolvency” is to be determined having regard to the law of the foreign State in which the foreign proceeding was commenced (see the GD at [48]), that would require the Singapore court to determine whether the subject company is insolvent or in severe financial distress under the law of the foreign State. In other words, the applicant for recognition must be prepared, at the time of presentation of the petition for recognition, to prove the insolvency or severe financial distress of the subject company under the relevant foreign law. This may require that in contested cases, evidence be adduced not only as to the financial status of the company but conceivably as to foreign law (see *Pacific Recreation Pte Ltd v S Y Technology Inc and another appeal* [2008] 2 SLR(R) 491 at [54]). In our view, introducing such requirements at the recognition stage would be undesirable. On this, we agree with Mr Lee’s suggestion that a light threshold should be imposed for recognition, which can then be tempered by granting recognition or relief subject to the imposition of appropriate conditions.

***Conclusion on the first issue***

98 We are therefore satisfied that there is no requirement under the SG Model Law for a company to be insolvent or in severe financial distress before a proceeding concerning that company may be recognised as a foreign



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proceeding under the SG Model Law. For this reason, we agree with the appellants that the approach taken in *Re Betcorp* towards the interpretation of the words “law relating to insolvency or adjustment of debt” (*ie*, the Broad Approach) should be adopted in Singapore. Interpreting Art 2(*h*) of the SG Model Law in that manner better coheres with its ordinary meaning and reflects Parliament’s intention to include proceedings concerning solvent companies within the scope of the SG Model Law. We are also satisfied that such an interpretation does not undermine, and is indeed consistent with, the overall purpose of the UNCITRAL Model Law.

99 To reiterate, under the Broad Approach, the requirement that a proceeding be conducted “under a law relating to insolvency or adjustment of debt” within the meaning of Art 2(*h*) will be satisfied as long as the law or the relevant part of the law under which the relevant proceeding is conducted includes provisions dealing with the insolvency of a company or the adjustment of its debts. It will generally be irrelevant that the company concerned in the relevant proceeding is not insolvent or in severe financial distress.

100 We turn to consider whether Ascentra’s Cayman Liquidation is a proceeding being conducted under a law relating to insolvency or adjustment of debt for the purposes of Art 2(*h*) of the SG Model Law. Ascentra’s Cayman Liquidation had begun as a voluntary winding up commenced pursuant to a shareholders’ resolution, the requirements of which are prescribed by s 116(c) of the Cayman Act. That provides that a company may be wound up voluntarily if it so resolves by special resolution. Ascentra’s Cayman Liquidation was subsequently brought under the supervision of the Cayman Grand Court pursuant to s 124(1) of the Cayman Act (see [8] above).

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101 Both ss 116(c) and 124(1) of the Cayman Act are contained within Part V of the Cayman Act, titled “Winding up of Companies and Associations”. Part V of the Cayman Act also contains other provisions that indisputably deal with the insolvency or adjustment of debt of a company. For instance, s 92 of the Cayman Act sets out the circumstances in which a company may be wound up by the court, which includes the situation where the company is unable to pay its debts (see s 92(d) of the Cayman Act). The Cayman Act also contains provisions dealing with arrangements and reconstructions. Section 86 of the Cayman Act provides that the company may compromise with its creditors and members, while s 87 of the Cayman Act sets out provisions for facilitating the reconstruction and amalgamation of companies. Applying the approach set out at [98] and [99] above, we are satisfied that the Cayman Act is a law relating to insolvency or adjustment of debt. It follows that Ascentra’s Cayman Liquidation, which is being conducted pursuant to provisions of the Cayman Act, is a proceeding being conducted under a law relating to insolvency or adjustment of debt for the purposes of Art 2(h) of the SG Model Law.

### **Whether Ascentra’s Cayman Liquidation is a collective proceeding**

102 The next issue is whether Ascentra’s Cayman Liquidation is a collective proceeding within the meaning of Art 2(h) of the SG Model Law. Before the Judge, the parties accepted and proceeded on the basis that the Cayman proceeding was a collective proceeding. It is therefore not surprising that this point was not pursued by the respondent in its written submissions. However, during the hearing before us, Mr Kumar took a different stance and informed us that the respondent was not prepared to concede that Ascentra’s Cayman Liquidation is a collective proceeding. Mr Lee did not object to Mr Kumar’s withdrawal of his earlier concession.

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103 The respondent's argument in this regard is contingent on its argument that Parliament did not intend for the SG Model Law to extend to proceedings involving solvent companies. However, for the reasons we have explained at [37]–[46] above, it is clear to us that Parliament had in fact modified Art 2(h) the SG Model Law to include proceedings concerning solvent companies within the scope of the SG Model Law.

104 In any event, the respondent has not pointed to any authority or material which suggests that a proceeding such as the present is not a collective proceeding for the purposes of the UNCITRAL Model Law just because it concerns a solvent company. The relevant principles and authorities concerning the requirement of a proceeding being collective were set out by this court in *United Securities* at [55]–[62] and may be summarised as follows:

(a) For a proceeding to be collective, it must concern *all* creditors of the debtor generally, in contrast to, for instance, one that is instigated at the request, and for the benefit, of a single secured creditor (*Cross-Border Insolvency: A Commentary on the UNCITRAL Model Law* (Look Chan Ho gen ed) (Globe Law and Business Publishing, 4th Ed, 2017) at p 178).

(b) In evaluating whether a proceeding is collective, a key consideration is whether substantially all of the assets and liabilities of the debtor are dealt with in the proceeding, subject to local priorities and statutory exceptions, and to local exclusions relating to the rights of secured creditors (2013 Guide, part two at para 70).

105 In *Re Betcorp*, the US Bankruptcy Court similarly observed that a collective proceeding is one which considers the rights and obligations of *all*

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*creditors*. On that basis, the US court held that the voluntary liquidation of Betcorp in Australia was a collective proceeding (*Re Betcorp* at 281). *Re Betcorp* may be contrasted with *Re Global Cord*, where the Cayman Grand Court appointed Joint Provisional Liquidators (“JPLs”) as fiduciaries to, among other things, investigate and potentially recover allegedly misappropriated corporate funds. The JPLs sought recognition of the proceedings under Chapter 15 of the US Bankruptcy Code. The US court refused recognition, finding that the Cayman proceeding was not a collective proceeding because it did not involve all of the creditors of the company, which is the “main definitional hallmark” of a collective proceeding within meaning of s 101(23) of the US Bankruptcy Code (*Re Global Cord* at 7–9).

106 Applying these principles to the present case, we are satisfied that Ascentra’s Cayman Liquidation is a collective proceeding within the meaning of Art 2(h) of the SG Model Law. Ascentra’s Cayman Liquidation is subject to various provisions in the Cayman Act that are concerned generally with the rights of *all* of Ascentra’s creditors. For instance, ss 140(1) and 140(2) of the Cayman Act provide:

**Distribution of the company’s property**

140. (1) Subject to subsection (2), the property of the company shall be applied in satisfaction of its liabilities *pari passu* and subject thereto shall be distributed amongst the members according to their rights and interests in the company.

(2) The collection in and application of the property of the company referred to in subsection (1) is without prejudice to and after taking into account and giving effect to the rights of preferred and secured creditors and to any agreement between the company and any creditors that the claims of such creditors shall be subordinated or otherwise deferred to the claims of any other creditors and to any contractual rights of set-off or netting of claims between the company and any person or persons (including without limitation any bilateral or any multi-lateral set-off or netting arrangements between the company and any

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person or persons) and subject to any agreement between the company and any person or persons to waive or limit the same.

107 Moreover, the Liquidators were appointed by the Cayman Grand Court as the joint official liquidators of Ascentra. In this connection, ss 110(1)(a) and 110(1)(b) of the Cayman Act prescribe that the function of an official liquidator is to: (a) collect, realise and distribute the assets of the company to its creditors and, if there is a surplus, to the persons entitled to it; and (b) report to the company's creditors and contributories upon the affairs of the company and the manner in which it has been wound up. In the premises, we are satisfied that the voluntary liquidation of Ascentra is one which concerns all of Ascentra's creditors generally and therefore qualifies as a collective proceeding under Art 2(h) of the SG Model Law.

**Whether Ascentra's Cayman Liquidation is being conducted for the purpose of reorganisation or liquidation**

108 We deal next with the respondent's contention that Ascentra's Cayman Liquidation is not being conducted for the purpose of reorganisation or liquidation within the meaning of Art 2(h) of the SG Model Law. The respondent chiefly relies on para 35 of part one of the Legislative Guide (which is a document intended by the UNCITRAL to be used as a reference by national authorities and legislative bodies when preparing or reviewing laws and regulations which address the financial difficulty of debtors):

35. There are a number of legal and economic justifications for liquidation. Broadly speaking, it can be argued that a commercial business that is unable to compete in a market economy should be removed from the marketplace. A principal identifying mark of an uncompetitive business is one that satisfies one of the tests of insolvency, that is, it is unable to meet its mature debts as they become due or its debts exceed its assets. More specifically, the need for liquidation proceedings can be viewed as addressing inter-creditor problems (when an insolvent debtor's assets are insufficient to



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meet the claims of all creditors it will be in a creditor's own best interests to take action to recover its claim before other creditors can take similar action) and as a disciplinary force that is an essential element of a sustainable debtor-creditor relationship. ...

On this basis, the respondent argues that “liquidation” within the meaning of the UNCITRAL Model Law was intended to refer to *insolvent* liquidation, and Ascentra’s solvent liquidation therefore did not satisfy this requirement.

109 For the reasons set out at [37]–[99] above, we have concluded that the SG Model Law extends to the recognition of foreign proceedings concerning solvent companies. That being the case, interpreting the word “liquidation” in Art 2(h) as being limited to insolvent liquidations, as the respondent suggests, would be incompatible with our conclusion.

110 In any event, we do not accept the respondent’s submission that the passage from the Legislative Guide that we have reproduced above shows that the UNCITRAL Model Law was intended to be limited to proceedings concerning *insolvent* liquidations. The passage in the Legislative Guide relied upon by the respondent states that *one of* the justifications for liquidating a company is its inability to compete in a market economy, which is evidenced by its insolvency. As the appellants rightly point out, that passage does not deal specifically with the UNCITRAL Model Law, let alone state that the word “liquidation” in Art 2(a) of the UNCITRAL Model Law was intended to refer only to insolvent liquidations.

111 In the premises, we hold that Ascentra’s Cayman Liquidation was conducted for the purpose of liquidation within the meaning of Art 2(h) of the SG Model Law.

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**Whether the Singapore courts have jurisdiction to recognise Ascentra’s Cayman Liquidation**

112 Finally, we turn to consider whether the Singapore courts have jurisdiction to recognise Ascentra’s Cayman Liquidation. Pursuant to Art 4(2)(a)(ii) of the SG Model Law, such jurisdiction will be established if the debtor has property situated in Singapore. Section 2(1) of the IRDA defines “property” broadly as: (a) money, goods, things in action, land and every description of property, wherever situated; and (b) obligations and every description of interest, whether present or future or vested or contingent, arising out of or incidental to property.

113 The appellants submit that the following constitute property situated in Singapore within the meaning of Art 4(2)(a)(ii) of the SG Model Law: (a) legal and/or equitable claims against the respondent and Scuderia Bianco; (b) retainer fees paid to its solicitors; and (c) shares in a Singapore-incorporated company, Interush (Singapore) Pte Ltd (“Interush”), which are held by Ascentra. The respondent does not dispute that Ascentra holds shares in Interush, nor that such shares constitute property situated in Singapore. Indeed, the respondent appears to have conceded in its submissions in the proceedings below that Ascentra’s shares in Interush constitute property for the purposes of Art 4(2)(a)(ii) of the SG Model Law. That alone suffices to found jurisdiction in Singapore to recognise Ascentra’s Cayman Liquidation under Art 17 of the SG Model Law. In the circumstances, it is unnecessary for us to determine whether Ascentra’s legal and/or equitable claims against the respondent and Scuderia Bianco and/or the legal fees paid by Ascentra to its solicitors also constitute property within the meaning of Art 4(2)(a)(ii) of the SG Model Law.

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### **Conclusion**

114 For these reasons, we are satisfied that Ascentra’s Cayman Liquidation qualifies as a “foreign proceeding” within the meaning of Art 2(h) of the SG Model Law. In particular, we are satisfied that Ascentra’s Cayman Liquidation: (a) is a collective proceeding; (b) is being conducted under a law relating to insolvency or adjustment of debt; and (c) has as its purpose the liquidation of Ascentra. In addition, we are satisfied that we have jurisdiction to recognise Ascentra’s Cayman Liquidation pursuant to Art 4(2)(a)(ii) of the SG Model Law.

115 As we have found the requirements for recognition under Art 17 of the SG Model Law to be fulfilled, we are obliged to recognise Ascentra’s Cayman Liquidation as a foreign main proceeding in Singapore under Art 17 of the SG Model Law (see [27] above). We therefore allow the present appeal. However, we will hear the parties on the question of whether the recognition of Ascentra’s Cayman Liquidation should be made subject to any conditions and give permission to the parties to make submissions on this within 14 days of the date of this judgment if they wish to seek the imposition of any conditions. If this is sought by either party, then the other party shall have 14 days to respond.

116 We award costs to the appellants fixed at \$60,000 (inclusive of disbursements), this reflecting the position of both parties in their costs

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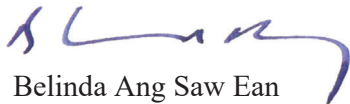
submissions as to the appropriate quantum of costs. The usual consequential orders are to apply.



Sundaresh Menon  
Chief Justice



Steven Chong  
Justice of the Court of Appeal



Belinda Ang Saw Ean  
Justice of the Court of Appeal

Lee Eng Beng SC and Yeo En Fei Walter (Rajah & Tann Singapore  
LLP) (instructed), Han Guangyuan Keith and Angela Phoon Yan  
Ling (Oon & Bazul LLP) for the appellants;  
Balakrishnan Ashok Kumar, Gloria Chan Hui En, Stanley Tan Sing  
Yee and Shreya Prakash (BlackOak LLC) for the respondent.

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